

COURT OF APPEALS OF NORTH CAROLINA

McLean v. Roadway Express, Inc.

56 N.C. App. 451 (1982) · Decided March 16, 1982

SUMMARY

The North Carolina Court of Appeals reviewed an Industrial Commission determination that the plaintiff experienced a change in condition warranting an increase in permanent partial disability compensation from 30% to 50%. The court held that the evidence did not establish the substantial change in physical capacity required by North Carolina General Statutes § 97-47. It also held that the approved supplemental memorandum of agreement finalized the original rating and reversed the Commission’s decision.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Arnold; Clark; Whichard
JURISDICTION	North Carolina
DECIDED	March 16, 1982
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed an Industrial Commission determination increasing plaintiff's permanent partial disability rating from 30 percent to 50 percent based on an alleged change in condition.
STANDARD OF REVIEW	Whether the Industrial Commission's findings and conclusion that plaintiff experienced a statutory change in condition were supported by competent evidence.
PRECEDENTIAL VALUE	Published North Carolina Court of Appeals opinion; precedential.
PARTIES	Roadway Express, Inc. v. McLean

TOPICS

- workers compensation
- administrative law
- appellate procedure
- remedies

PRACTICE AREAS

- workers compensation
- employment law
- administrative law
- remedies

QUESTIONS PRESENTED

1. Whether the evidence supported the Industrial Commission's conclusion that plaintiff experienced a substantial change in physical capacity to earn after the final compensation award.
2. Whether plaintiff was exempt from the change-in-condition requirement because the original disability rating was allegedly not final.

HOLDINGS

1. The record did not support a finding of a substantial change in plaintiff's physical capacity to earn, so the Industrial Commission erred in concluding that plaintiff had undergone a change in condition under G.S. 97-47.
2. The original disability rating became final when plaintiff relied on it in entering the compensation agreement and the Industrial Commission approved that agreement; plaintiff therefore remained subject to the statutory change-in-condition requirement.

KEY QUOTATIONS

"It is well settled in cases construing G.S. 97-47 that "change of condition," as contemplated by the statute, means "a substantial change, after a final award of compensation, of physical capacity to earn" (453)

"An agreement to pay compensation, when approved by the Industrial Commission, is equivalent to an award." (453)

FACTUAL BACKGROUND

Plaintiff had an original permanent partial disability rating of 30 percent for his back and entered into an agreement with his employer that was approved by the Industrial Commission. After a second back operation, Dr. Pollock increased the rating to 50 percent, although he testified that he saw very little difference in plaintiff's condition between 1977 and 1979. The Commission relied on the second operation and plaintiff's continuing low-back discomfort to find a change in condition.

PROCEDURAL HISTORY

The parties entered into a Supplemental Memorandum of Agreement concerning plaintiff's disability rating, and the Industrial Commission approved the agreement. The Commission later concluded that plaintiff had experienced a compensable change in condition and increased his permanent partial disability rating. Defendant appealed.

DISPOSITION

reversed

CASES CITED

- Shuler v. Talon Div. of Textron, 30 N.C. App. 570, 577, 227 S.E.2d 627, 631 (1976)
- Tucker v. FCX, 36 N.C. App. 438, 444, 245 S.E.2d 77, 80 (1978)

- *Watkins v. Motor Lines, Inc.*, 10 N.C. App. 486, 489, 179 S.E.2d 130, 132 (1971)

OPINION

ARNOLD, J.

ARNOLD, Judge. Defendant assigns as error the Commission's conclusion that plaintiff had suffered a change in condition between the date of his first disability rating and the date of hearing which increased his permanent partial disability from 30% to 50%. Defendant challenges the adequacy of the factual foundation for this conclusion which was set forth in finding of fact #6: 6.

The reason Dr. Pollock changed his rating of permanent partial disability from 30 percent to 50 percent of the back was that the plaintiff had undergone a second operation on his back... and that the plaintiff was still experiencing discomfort in the low back region. Defendant asserts that Dr. Pollock merely changed his opinion as to the extent of plaintiff's disability after the second operation failed to improve his condition. "A mere change of the doctor's opinion with respect to claimant's preexisting condition," defendant notes "does not constitute a change of condition required by G.S.

Section 97-47." *Shuler v. Talon Div. of Textron*, 30 N.C. App. 570, 577, 227 S.E. 2d 627, 631 (1976). Defendant argues that there was no evidence of a worsening of plaintiff's condition as a result of the second operation since Dr. Pollock testified that he "saw very little difference in his condition in '77 and '79." Moreover, the record reveals no basis for Dr. Pollock's opinion changing his rating from 30 percent to 50 percent partial disability rating.

It is well settled in cases construing G.S. 97-47 that "change of condition," as contemplated by the statute, means "a substantial change, after a final award of compensation, of physical capacity to earn...." *Tucker v. FCX*, 36 N.C. App. 438, 444, 245 S.E. 2d 77, 80 (1978).

We must agree with defendant that there is no evidence in the record to support the Commission's conclusion that the plaintiff here underwent such a change of condition. Plaintiff asserts as an alternative ground for upholding the Commission's award that he never received a "final rating" and was therefore not bound by the Supplemental Memorandum of Agreement with defendant.

We cannot agree. While it is possible that Dr. Pollock did not intend for the original disability rating to be "final," plaintiff's reliance on that rating in entering into the agreement with his employer and the Commission's approval of the agreement operated to "finalize" the rating.

As stated by this Court in *Watkins v. Motor Lines, Inc.*, 10 N.C. App. 486, 489, 179 S.E. 2d 130, 132 (1971), "[a]n agreement to pay compensation, when approved by the Industrial Commission, is equivalent to an award." According to the statute, an award may be reviewed solely "on the grounds of a change in condition...." As noted previously, plaintiff here failed to fulfill this threshold requirement.

We conclude that the Commission's findings and conclusion of law that plaintiff suffered a change of condition is unsupported by the evidence and must be reversed. Reversed. Judges Clark and Which ard concur.

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