

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)

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