Are employees entitled to more than 500 weeks of benefits?

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By Joseph D. Delfino on June 10, 2021

Before June 24, 2011, injured employees were eligible for lifetime Temporary Total Disability (TTD) benefits for the duration of their disability. In 2011, the North Carolina legislature passed revisions to the Workers' Compensation Act. One of the revisions altered N.C. Gen. Stat. § 97-29(b), which now states:

The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.

In claims arising on or after June 24, 2011, employee's are only entitled to 500-weeks of benefits unless they qualify for extended benefits under N.C. Gen. Stat. § 97-29(c) which states:

An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section only if (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. §97-84, unless agreed to by the parties, the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity.

If an employee had a workers' compensation claim on or after June 24, 2011, that employee could be entitled to more than 500-weeks of TTD benefits. However, the request for extended TTD benefits can only be made if the employee had already received 425-weeks of benefits and if the employee can show, by a preponderance of the evidence, a total loss of wage-earning capacity.

Since these revisions to the North Carolina Workers' Compensation Act, both employees and employers have speculated how the Commission and the Courts would define the phrase "total loss of wage-earning capacity." Since an employee could not request extended TTD benefits until after receiving 425-weeks of benefits, we have not yet received a definitive answer from the Commission or the Courts. (Assuming an employee was injured on June 24, 2011, that employee would have received 425 weeks of TTD on August 16, 2019.)

A recent decision from a North Carolina Deputy Commissioner appears to reflect a belief that if an employee is simply able to prove that he/she is still disabled after 425 weeks, they are entitled to extended TTD benefits beyond 500-weeks. This decision has been appealed to the Full Commission.

In the next 12-months, courts in North Carolina will likely provide further clarity regarding the meaning of "total loss of wage-earning capacity" and what type of evidence is required for an employee to prove an entitlement to extended TTD benefits.

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