COA Issues Opinion On Extended Benefits

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The Court of Appeals Issues Its First Opinion on Extended Benefits

The Court of Appeals has issued its first opinion on extended disability benefits, which came into being following the 2011 amendments to N.C.G.S. § 97-29(c). In Sturdivant v. N.C. Dept. of Public Safety, COA22-421 (April 18, 2023), the Court held that "total loss of wage-earning capacity" and "total disability" are synonymous.

Plaintiff suffered a back injury in August 2011. Defendant began paying temporary total disability benefits and paid those benefits continuously. In 2020, after receiving these benefits for over 425 weeks, Plaintiff sought to qualify for extended disability benefits beyond 500 weeks. The Full Commission denied these benefits.

The Full Commission had held that "total loss of wage-earning capacity" meant something different under N.C.G.S. § 97-29(c) for determining extended benefits than the traditional definition of disability. The Full Commission concluded "total loss of wage-earning capacity" meant "a plaintiff must show that they have a total loss of the ability to earn wages in any employment." Essentially, the Full Commission determined that in order to qualify for extended benefits, a plaintiff must show that his or her earning capacity had been completely obliterated.

The Court of Appeals reversed this conclusion and held that "total loss of wage-earning capacity" meant the same as "total incapacity to earn wages" under N.C.G.S. § 97-29(b), and the proof required to initially show disability at the outset of a claim. This proof is typically shown in one of the first three factors under Russell v. Lowes, 108 N.C. App. 762. 765, 425 S.E.2d 454, 457 (1993). Russell states that an employee may (1) produce medical evidence that he is mentally or physically incapable, as a consequence of the work related injury, of work in any employment; (2) produce evidence that he is capable of some work, but that he has, after a reasonable effort on his part, been unsuccessful in obtaining employment; (3) produce evidence that he is capable of some work but that it would be futile because of pre-existing conditions such as age, experience, or lack of education to seek other employment.

Importantly, the Court of Appeals further held that any presumption of disability a plaintiff may have had prior to 500 weeks disappears, and it remains the plaintiff's burden to come forward with evidence to re-establish that he or she is entitled to disability payments beyond the 500 weeks.

While the Court of Appeals reversed the Full Commission's definition of "total loss of wage-earning capacity," the Court nonetheless held that Plaintiff had failed to prove he was entitled to extended disability benefits under the traditional factors.

Pursuant to Sturdivant, the existing law for qualifying for extended benefits means a plaintiff has the burden of re-establishing his or her entitlement to disability benefits prior to reaching 500 weeks of benefits; however, a plaintiff may meet this burden under any of the traditional methods

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for proving disability.

Sturdivant will likely go up to the Supreme Court for a further opinion, and Hedrick Gardner will keep you updated on further developments in this case, and in any other cases concerning extended benefits issued by our appellate courts.

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