Negligence, Even Gross Negligence, Will Not Bar a Worker's Compensation Claim

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The North Carolina Supreme Court has long recognized that an employee's injury caused by their own negligence act, cannot, in itself, bar their workers' compensation claim.

This principle is outlined in Hartley v. N.C. Prison Department, 258 N.C. 287, 128 S.E.2d 598 (1962). In that case, Mr. Hartley, a prison guard, was on his way to relieve a fellow guard from their post, about 200 yards away and around a fence. Instead of walking around the fence, Mr. Hartley chose to scale the fence and in doing so, lost his balance, fell and sustained injury. The Hartley Court did not explicitly note that Mr. Hartley was negligent in scaling the fend but noted that "… not even gross negligence is a defense to a compensation claim. Only intoxication or injury intentionally inflicted will defeat a claim." Hartley v. N.C. Prison Dep't, 258 N.C. 287, 289, 128 S.E.2d 598, 600 (1962).

However, an employee's negligent actions may subject their compensation to a 10% reduction if the defendants can show that the injury was caused by the employee's willful failure to use a safety appliance, perform a statutory duty, or by the willful breach of any rule or regulation adopted by the employer, approved by the Commission, and brought to the knowledge of the employee prior to the injury. N.C.G.S. § 97-12.

A general example of a justified 10% reduction may include a truck driver who fell asleep behind the wheel, causing an accident and resulting injury for which the driver seeks compensation under the Act. Under federal statute, truck drivers are specifically barred from operating their commercial motor vehicle "… while the driver's ability or alertness is so impaired, or so likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle." 49 CFR 392.3. In that scenario, the driver was negligent by driving while drowsy, which would not bar their claim, but defendants have an argument the driver's drowsiness was a failure to abide by a statutory duty (under 49 CFR 392.3) and could result in a 10% reduction in compensation per N.C.G.S. § 97-12.

Proving a bar to a claim or reduction in compensation requires thorough investigation of the incident and surrounding incidents. Hedrick Gardner Kincheloe & Garofalo, LLP has over 65 years of experience investigating and litigating these incidents. Please contact us if you have any questions about your claim.

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