

The Supreme Court Affirms Extended Benefits Standard

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By M. Duane Jones on December 17, 2024

On Friday, December 13, 2024, our Supreme Court issued a decision in *Sturdivant v. N. Carolina Dep't of Pub. Safety*, which affirmed what the North Carolina Legislature has already confirmed: the "total loss of wage-earning capacity" required for an employee to qualify for extended disability benefits (beyond 500 weeks) means "the complete elimination of the capacity to earn any wages." This is a different standard than what an employee must show to qualify for disability prior to 500 weeks.

N.C. Gen. Stat. 97-29(c), enacted in 2011, capped temporary total disability benefits at 500 weeks, while also allowing an employee with the opportunity to apply for extended benefits beyond 500 weeks upon a showing of "total loss of wage-earning capacity."

After the Court of Appeals' original decision in *Sturdivant* in 2023, our Legislature added a provision to N.C. Gen. Stat. 97-29(c) confirming that "total loss of wage-earning capacity" means "the complete elimination of the capacity to earn any wages." Specifically, the added provision states:

"For the purposes of this subsection only, the term "total loss of wage-earning capacity" shall mean the complete elimination of the capacity to earn any wages. "Disability" as defined by G.S. 97-2(9) and "suitable employment" as defined by G.S. 97-2(22) shall not apply to this provision. The Commission may consider preexisting and injury-related physical and mental limitations, vocational skills, education, and experience in determining whether the employee has sustained a total loss of wage-earning capacity."

In its Opinion, the Supreme Court explained why the Legislature's amendment was always the correct interpretation of the plain language of the words "total loss of wage-earning capacity," which clearly means something different than the "total disability" standard used in determining disability for an employee prior to 500 weeks.

The Supreme Court also confirmed the Legislature's amendment was a clarification of an existing statute, and thus applies to all cases arising after the 2011 amendment.

For any questions or to discuss this matter further, please don't hesitate to contact us.