

BEST PRACTICES FOR DRAFTING A PROPOSED OPINION & AWARD

Tips for writing your best proposed Opinion & Award

NORTH CAROLINA INDUSTRIAL COMMISSION
I.C. NOS. 012345 & 12-345678, POLLY PLAINTIFF, Widow, and BOY PLAINTIFF and
GIRL PLAINTIFF, Minor Children, of PAUL PLAINTIFF, Deceased Employee,
Plaintiffs v. EMPLOYER, INC., Employer, INSURANCE CO., Carrier, (RISK, Third-
Party Administrator), Defendants.

PROPOSED OPINION AND AWARD by JUDY JUDGE, Deputy Commissioner.

Filed:

This matter was heard before the Undersigned on October 1, 2017, in Wilmington, North Carolina. Following receipt of the parties' contentions and proposed Opinion and Awards, the undersigned closed the record in this matter on January 22, 2018. This matter is ready for decision.

APPEARANCES

Plaintiff: Plaintiff's Law Firm, Wilmington, North Carolina; Plaintiff's Attorney, appearing.

Defendants: Defendants' Law Firm, Raleigh, North Carolina; Defendants' Attorney, appearing.

The Undersigned finds as fact and concludes as a matter of law the following, which were entered into by the parties in the pre-trial agreement as:

STIPULATIONS

1. All parties are properly before the North Carolina Industrial Commission and the Industrial Commission has jurisdiction of the parties and of the subject matter of this action.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder of parties.

Why is it important to draft a quality proposed O&A?

- Your proposed O&A will serve as a guide to the Deputy Commissioner in the proceedings, a resource for the Full Commission's *de novo* review, and as the basis for appellate review by the Court of Appeals & Supreme Court.
- A Deputy Commissioner, just like a District or Superior Court Judge, has no staff to assist in the preparation of opinions. Hundreds of cases are scheduled for Deputy Commissioners to hear each year and many of those cases require complex and lengthy opinions.
- Proposed O&As allow for a decision to be completed more quickly. "Justice delayed is justice denied."
- The Court of Appeals has validated the use of proposed opinions by judges. *See In re A.B.*, 239 N.C. App. 157, 768 S.E.2d 573 (2015).
- You help your client and the Commission by writing a good proposed O&A.

Components of a proposed O&A

- Caption
- Procedural Posture
- Appearances
- Stipulations
- Exhibits
- Depositions
- Issues
- Findings of Fact
- Conclusions of Law
- Award

Caption

I.C. NOS. 012345 & 12-345678, POLLY PLAINTIFF, Widow, and BOY PLAINTIFF and GIRL PLAINTIFF, Minor Children, of PAUL PLAINTIFF, Deceased Employee, Plaintiffs v. EMPLOYER, INC., Employer, INSURANCE CO., Carrier, (RISK, Third-Party Administrator), Defendants.

- Confirm all I.C. Numbers related to the proceedings are included in the caption
- Confirm the proper parties are named in the caption
- Distinguish between Carriers, Third-Party Administrators, and Servicing Agents
- Caption should conform to the above style/format rather than the captions used at the appellate level

Procedural Posture

This matter was heard before the undersigned on October 1, 2017, in Wilmington, North Carolina. Following receipt of the parties' contentions and proposed Opinion and Awards, the undersigned closed the record in this matter on January 22, 2018. This matter is ready for decision.

* * * * *

- Note the date(s) and location of the evidentiary hearing and the date the record was closed

A P P E A R A N C E S

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Plaintiff: Plaintiff's Law Firm, Wilmington, North Carolina;
Plaintiff's Attorney, appearing.

Defendants: Defendants' Law Firm, Raleigh, North Carolina;
Defendants' Attorney, appearing on behalf of Employer One
and Insurance Carrier One.

Second Defendants' Law Firm, Charlotte, North Carolina;
Second Defendants' Attorney, appearing on behalf of
Employer Two and Insurance Carrier Two.

* * * * *

- Include appearances for ALL parties in matter
- If more than one Defendant, add the name of the party the attorney is representing

Effective Use of Stipulations

- The use of stipulations reduces the workload of each attorney and allows the parties to formally agree to facts that are not in dispute.
- The more evidence that can be stipulated to will lessen the amount of evidence required to prove a certain fact.
- Stipulations are judicial admissions and “are binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact.” *Poythress v. Libbey-Owens Ford Co.*, 67 N.C. App. 720, 723, 313 S.e.2d 893, 895 (1984).
- In Workers’ Compensation matters, the parties typically stipulate to jurisdiction, status of employer as a qualified employer under the Act, the liability of the carrier, dates of the alleged injuries, and employee’s average weekly wage.
- Stipulations in the proposed O&A should include all stipulations reflected on the Pre-Trial Agreement.

STIPULATIONS

The undersigned finds as fact and concludes as a matter of law the following, which were entered into by the parties in the pre-trial agreement as:

STIPULATIONS

1. All parties are properly before the North Carolina Industrial Commission and the Industrial Commission has jurisdiction of the parties and of the subject matter of this action.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder of parties.
3. On or about October 11, 2018, Defendant-Employer employed more than three employees and the parties were bound by and subject to the provisions of the North Carolina Workers' Compensation Act.
4. On or about October 11, 2018, an employee-employer relationship existed between Plaintiff and Defendant-Employer.
5. On or about October 11, 2018, Defendant-Employer was insured with Synergy Coverage Solutions with respect to workers' compensation insurance coverage for its employees.
6. On or about October 11, 2018, Plaintiff was employed by Defendant-Employer at an average weekly wage of \$552.63 and a compensation rate of \$368.44.

EXHIBITS

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The following documents were admitted into evidence by the Deputy Commissioner
as:

1. Stipulated Exhibit #1 – Pre-Trial Agreement (paginated 1-5).
2. Stipulated Exhibit #2 – Industrial Commission forms and filings; Plaintiff's medical records; and discovery responses (paginated 6 through 1177).
3. Plaintiff's Exhibit #1 – Discovery Responses.
4. Defendants' Exhibit #2 – Plaintiff's personnel records.

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DEPOSITIONS

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The transcripts of the depositions of the following witnesses were admitted into evidence by the Deputy Commissioner:

1. William Lestini, M.D., Triangle Orthopaedics, taken on October 11, 2018.
2. William T. McClure, Jr., CWCE, CEES, Hand & Rehabilitation Specialists, taken on October 11, 2018.

* * * * *

ISSUES

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1. Did Plaintiff sustain a compensable injury by accident on October 11, 2018?
2. If so, is Plaintiff's low back injury causally related to the alleged injury by accident?
3. If so, has Plaintiff met the burden of proving he was disabled as a result of the alleged injury by accident?
4. Have Defendants engaged in stubborn, unfounded litigiousness in defending this claim?

* * * * *

FINDINGS OF FACT

- An Opinion and Award must include detailed findings of fact to address every disputed issue.
- Each finding of fact must be supported by competent evidence. Do not propose a finding that is not supported by the record evidence.
 - Per the Post-Hearing Order - “All findings of fact contained in proposed Opinion and Award shall contain page citations to the documents or a reference to the hearing testimony upon which the finding is based.”
- For the most part, a finding of fact should **not** be a recitation of evidence.
- It is not necessary to recite all evidentiary facts presented at the hearing. Only include material and ultimate facts upon which a conclusion of law can be based.
- Include ultimate facts – “the final resulting effect which is reached by processes of logical reasoning from the evidentiary facts.” *Woodard v. Mordecai*, 234 N.C. 463, 472, 67 S.E.2d 639, 645 (1951).

ORDERING OF FINDINGS OF FACT

A general guideline on how to order your findings of fact in a logical, easy to follow manner.

- Introduction of P – age, education level, work history, employment with employer and job title
- Description of the accident and any testimony from Plaintiff and witnesses in relation to the accident
- A chronological summary of relevant medical treatment – do not write full, detailed summaries of every visit to every physician, therapist, or other provider
- A summary of the testimony of any experts
- Findings on credibility and assignment of weight to the testimony of Plaintiff, witnesses, and experts
- Ultimate findings of fact
- You can include alternative findings of fact

CONCLUSIONS OF LAW

- As a general rule, any determination requiring the exercise of judgment or the application of legal principles is more properly classified as a conclusion of law.
- A conclusion of law is the court's statement of the law which is determinative of the matters at issue between the parties. A conclusion of law must be based on the facts found by the court and must be stated separately. The conclusions of law necessary to be stated are the conclusions which, under the facts found, are required by the law and from which the judgment is to result.
- Include statutory and case law cites at the end of each conclusion of law that support the conclusion of law that you have proposed.
- You can include alternative or *assuming arguendo* conclusions of law.

A W A R D

- An award should be as specific as possible with regards to dates and amounts of compensation to be awarded.
- Every separate claim of relief to be awarded should have at least one corresponding conclusion of law.
- There are no hearing costs assessed in Workers' Compensation proceedings.
- You can include alternative awards.

BEST PRACTICES

- OpenText Content Service (LiveLink) is a great resource to find prior Opinions filed by a specific Deputy Commissioner for guidance.
- Be sure to provide a fair and accurate accounting of any testimony or evidence.
- Avoid inflammatory language.
- Communicate with the Deputy Commissioner about any preferences related to Contentions and the proposed Opinion and Award.
- Once you have completed the proposed Opinion and Award, read it from the beginning as if you knew nothing about the case and confirm all issues have been addressed.