

NORTH CAROLINA INDUSTRIAL COMMISSION

I.C. NO: 600965, ALICIA DIANE CAVANAUGH, Employee, Plaintiff; v. LEXINGTON FURNITURE/MASCO CORP., Self-Insured Employer, Defendant; CARSON BROOKS, INC., Third Party Administrator.

ORDER for the Full Commission by THOMAS J. BOLCH, Commissioner.

FILED:

This matter is before the Full Commission on plaintiff's motion for an order under Rule 802, N.C.I.C. Workers' Compensation Rules, imposing sanctions on the defendant for its failure to comply with the Workers Compensation Act and with the Rules of the Industrial Commission, specifically for its failure to comply with the Opinion and Award of the Commission filed October 16, 1998 and affirmed by the North Carolina Court of Appeals (COA 99-122) by opinion filed March 7, 2000.

1. This case was heard in Morganton on January 17, 1997 before Deputy Commissioner Martha W. Lowrance. An Opinion and Award in favor of plaintiff was filed by Deputy Commissioner W. Bain Jones on November 26, 1997.

2. Defendants appealed and the matter was heard before the Full Commission on July 1, 1998. The Full Commissioner entered an Opinion and Award on October 16, 1998, signed by Commissioner Bolch, in which Commissioners Mavretic and Riggsbee concurred. The Full Commission Opinion and Award substantially affirmed the deputy commissioner, and ordered payment for all past and future medical services, payment of weekly compensation to the plaintiff and payment of counsel fees.

3. Defendants appealed to the North Carolina Court of Appeals.

4. In an Opinion filed March 7, 2000, a unanimous panel of the North Carolina Court of Appeals affirmed the Commission, stating "we affirm the Opinion and Award of the Commission finding that employee sustained a compensable

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occupational disease for which employer and its carrier on the risk are

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liable..:'

5. The COA also found that the employer should not receive a credit for any short term disability benefits paid under a private policy, stating:

Both the Deputy Commissioner and the Commission found that employer should not have denied employee's claim. As a result of employer's denial of the claim, employee suffered lengthy periods out of work without money for medicine.

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B. The defendants have failed and refused to pay any amount of money pursuant to the Opinion and Award of the Industrial Commission. The plaintiff is suffering financial hardship. Her phone is being cut off. She cannot buy adequate groceries. Her lengthy-period out of work and without income has continued over three years. The defendants stubbornly litigated the case to the limits of the appeals process. The Court of Appeals in its opinion made it clear that the appeal was indeed a thin one. Now the process has over, but the defendants still refuse to do what the law requires, and have advanced no excuse whatsoever for this refusal.

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7. The COA Opinion was filed on March 7,2000. The COA mandate was issued on March 27, after which the defendants had fifteen days to file a petition for rehearing or discretionary review, which was not filed. Therefore the Court of Appeals Opinion affirming the Opinion and Award of the Industrial Commission became final on April 11, 200. Payment was due fourteen days following that date. Payment was overdue and the statutory penalty payable after an additional fourteen days, which ended on May 5, 2000- Since that date plaintiff has made repeated written and telephone requests for payment of the Opinion and Award.

8. N.C.I.C. Rule 403 states that "All payments of compensation must be made in strict accordance with the Award issued by the Industrial Commission:"
N.C.I.C. Rule 802 states "Upon failure to comply with any of the aforementioned rules, the Industrial Commission may subject the violator to

any of the sanctions ...including reasonable attorney fees to be taxed against the party or his counsel whose conduct necessitates the order."

WHEREFORE the plaintiff moves this Commission for an Order requiring the defendants to pay disability compensation to the plaintiff as ordered by the Full Commission and affirmed by the North Carolina Court of Appeals, to pay a 10% statutory penalty on all payments made more than fourteen days after the payments are due, and to pay attorney fees and sanctions, under Rule 802, said sanctions to include a daily sanction in an amount of \$100 per day for so long as the Opinion and Award remains unpaid.
