

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA04-1218

NORTH CAROLINA COURT OF APPEALS

Filed: 19 July 2005

BARBARA PAGE,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File Nos. 055882 & 696704

UNC-CHAPEL HILL
Employer,

KEY RISK MANAGEMENT SERVICES,
Third Party Administrator,

and

DANKA HOLDINGS,
Employer,

ZURICH AMERICAN INSURANCE GROUP,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 10 May 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals on 20 April 2005.

Law Offices of George W. Lennon, by George W. Lennon, for plaintiff-appellee.

Attorney General Roy Cooper, by Assistant Attorney General Mark X. Sneed, for defendant-appellant UNC-Chapel Hill.

Lewis & Roberts, P.L.L.C., by Richard M. Lewis and Jeffrey A. Misenheimer, for defendant-appellee Danka Holdings.

McGEE, Judge.

The University of North Carolina at Chapel Hill (UNC) and Key Risk Management Services (collectively defendants) appeal the 10 May 2004 opinion and award of the Industrial Commission (the Commission), in which the Commission awarded Barbara Page (plaintiff) temporary total disability at the rate of \$388.35 per week from 10 May 2000, and continuing until further order of the Commission.

Plaintiff began working for UNC in August 1995. Plaintiff served as a secretary to the chairman of the Pediatrics Department throughout her employment at UNC. Her job involved repetitive use of her hands, wrists, and arms. Plaintiff filed a claim for bilateral carpal tunnel syndrome as a result of her employment on 10 October 1996. UNC accepted plaintiff's workers' compensation claim and paid plaintiff temporary total disability and permanent partial disability benefits.

Plaintiff left her employment at UNC and sought employment that required reduced use of her hands, wrists, and arms. She was first employed by Ikon, where she sold copiers. In 1998, she began work with Danka Holdings (Danka), where she sold copiers and office equipment. Unlike plaintiff's position with UNC, paperwork and keyboarding were not the largest part of plaintiff's job with Danka. However, during the course of her employment with Danka, plaintiff's job duties changed. Plaintiff was issued a new laptop computer and was required to do more typing, which increased her hand and arm pain. Shortly thereafter, on the evening of 26 April 2000, plaintiff was working from her home, typing on the laptop, when she experienced severe arm pain.

Following this incident, plaintiff filed a claim against Danka for injury by accident or occupational disease. Danka denied plaintiff's claim. Plaintiff also filed a claim against UNC for change of condition pursuant to N.C. Gen. Stat. §97-47, which UNC denied.

A deputy commissioner found that “[t]he greater weight of the medical evidence [was] that the last injurious exposure for plaintiff’s [upper extremity injuries] occurred while plaintiff was employed with defendant-employer Danka.” The deputy commissioner further found that plaintiff’s employment at Danka substantially aggravated plaintiff’s pre-existing non-disabling bilateral hand and arm pain. Plaintiff was awarded temporary total disability benefits from Danka at a compensation rate of \$388.35 per week. (R.p. page 24) UNC was dismissed as a defendant.

Danka appealed to the Commission. The Commission reversed the deputy commissioner’s opinion and award, finding that plaintiff was not injured by her job duties at Danka. The Commission further found that “plaintiff underwent a compensable change of condition of her upper extremity condition incurred while employed at UNC that is unrelated to her employment with Danka.” In an opinion and award entered 22 September 2003, the Commission ordered UNC to continue paying temporary total disability benefits to plaintiff, and to pay for all medical expenses incurred by plaintiff as a result of her upper extremity condition.

Upon plaintiff’s motion, we dismiss defendants’ appeal for two reasons. First, in violation of Rule 28 of our Rules of Appellate Procedure, defendants do not refer to the “assignments of error pertinent to the question” defendants raise on appeal. N.C.R. App. P. 28(b)(6) (“Immediately following each question [presented on appeal] shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal.”). “The North Carolina Rules of Appellate Procedure are mandatory and ‘failure to follow these rules will subject an appeal to dismissal.’” *Viar v. N. C. Dep’t of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)).

Additionally, defendants also fail to argue their assignments of error on appeal. Defendants assigned as error two of the Commission's conclusions of law, but defendants abandoned these assignments of error by failing to argue them in their brief. N.C.R. App. P. 28(b)(6). As these two assignments of error were defendants' only assignments of error, we dismiss defendants' appeal.

Dismissed.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).