

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-812  
NORTH CAROLINA COURT OF APPEALS

Filed: 7 June 2011

DORIS M. EVERHART,  
Administrator of the Estate of  
RONDALL ODELL EVERHART,  
Deceased Employee  
Plaintiff,

v.

From the North Carolina Industrial Commission  
IC No. 078061

NORANDAL USA INC.,  
Employer  
Defendant,

and

CIGNA/ACE USA/ESIS,  
Carrier  
Defendant.

Appeal by Plaintiff from Order entered 5 April 2010 by Christopher Scott, Commissioner, on behalf of the Full Commission. Heard in the Court of Appeals 15 December 2010.

*Wallace and Graham, P.A., by Edward L. Pauley, for Plaintiff-appellant.*

*Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Harmony Whalen Taylor and M. Duane Jones, for Defendants-appellees.*

HUNTER, JR., Robert N., Judge.

Mr. Everhart was employed by Norandal USA, Inc., a manufacturer of aluminum, and contracted asbestosis of the lung as a result of his employment. Mr. Everhart filed a claim for benefits. In the course of this litigation, Mr. Everhart died. Doris M. Everhart, the administrator of Mr. Everhart's estate, has been substituted as the plaintiff in this case (we refer to the active plaintiff in this case as "Plaintiff"). Norandal and its insurance carrier, CIGNA/ACE USA/ESIS, (collectively, "Defendants") denied liability. Plaintiff's claim was consolidated for a hearing before the Industrial Commission with five other claims against Norandal. Prior to the hearing, Deputy Commissioner Glenn determined Defendants failed to deny the claim in a timely manner. They were precluded from disputing (1) that Mr. Everhart contracted asbestosis as a result of his employment with Norandal and (2) that Norandal was liable for this injury. However, Defendants were permitted to litigate what benefits Plaintiff was entitled to receive.

The hearing occurred on 1 March 2004. Deputy Commissioner Glenn entered an opinion and award on 8 March 2005 that found Plaintiff's claim fully compensable and awarded benefits to Plaintiff. Defendants appealed to the Full Commission. The Full Commission reversed Deputy Commissioner Glenn's ruling that

Defendants waived their defenses to Plaintiff's claim and vacated the 8 March 2005 opinion and award. The Commission remanded the case for a full evidentiary hearing.

At the second hearing, which began on 1 May 2006, the parties stipulated to the introduction of all evidence from the 1 March 2004 hearing. The parties took the deposition testimony of several witnesses. On 27 March 2008, Chief Deputy Commissioner Gheen entered an opinion and award favorable to Plaintiff. The Full Commission affirmed that award. Defendants paid the award, with interest accruing from 1 May 2006.

On 9 April 2009, Plaintiff requested a hearing concerning the computation of interest, arguing interest began accruing on the award from the date of the first hearing (1 March 2004). Deputy Commissioner Griffin denied Plaintiff's claim for additional interest. The Full Commission affirmed for two reasons: (1) the 1 March 2004 "hearing before Deputy Commissioner Glenn was *not* a hearing on the merits because of Deputy Commissioner Glenn's verbal order barring defendants from disputing the compensability of [Plaintiff's claim]"; and (2) the initial order and award arising from that hearing was ultimately vacated. Plaintiff appealed.

Section 97-86.2 of the Workers' Compensation Act provides that,

[i]n any workers' compensation case in which an order is issued either granting or denying an award to the employee and where there is an appeal resulting in an ultimate award to the employee, the insurance carrier or employer shall pay interest on the final award or unpaid portion thereof from the date of the initial hearing on the claim, until paid at the legal rate of interest provided in G.S. 24-1.

N.C. Gen. Stat. § 97-86.2 (2009). "The first hearing before the deputy commissioner adjudicating the merits of the employee's claim is the 'initial hearing on the claim' within the meaning of section 97-86.2." *Strickland v. Carolina Classics Catfish, Inc.*, 127 N.C. App. 615, 616-17, 492 S.E.2d 362, 363 (1997). Plaintiff argues the word "hearing" contained in section 97-86.2 applies to the 1 March 2004 proceeding, and therefore, interest on the award began accruing on that date. Defendants counter that, because Norandal was prevented from litigating the compensability of Plaintiff's claim—which is a separate issue from the *amount* of compensation—at the vacated 1 March 2004 proceeding, that proceeding was not a "hearing" within the meaning of the statute. Defendants also argue interest cannot accrue from the first hearing because that hearing was later vacated.

While Plaintiff's appeal was pending, this Court addressed the issues presented by Plaintiff's appeal in another decision. We are bound to reach the same conclusion. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). For the reasons stated in *Puckett v. Norandal USA, Inc.*, No. COA10-805 (N.C. Ct. App. May 3, 2011), the Industrial Commission's order concerning interest is

Reversed.

Judges STEELMAN and STEPHENS concur.

Report per Rule 30(e).