

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-1088

NORTH CAROLINA COURT OF APPEALS

Filed: 15 March 2011

DEXTER M. CARNEY,
Plaintiff,
Employee,

v.

North Carolina Industrial
Commission
I.C. No. 88604

GREENVILLE TV & APPLIANCE, INC.,
Employer,

and

STONEWOOD INSURANCE COMPANY,
Carrier,
Defendants.

Appeal by plaintiff from opinion and award entered 9 July 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 22 February 2011.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for plaintiff-appellant.

Brooks, Stevens & Pope, P.A., by Matthew P. Blake, for defendants-appellants.

Per Curiam.

Dexter M. Carney ("plaintiff") appeals from the Industrial Commission's Opinion and Award, determining that plaintiff had not proven that he had sustained a compensable injury and denying his claim for workers' compensation benefits. After careful review, we dismiss plaintiff's appeal.

Plaintiff makes two arguments on appeal: (1) The Commission violated his rights to due process and equal protection when it denied him medical treatment and compensation for his back injury, and (2) The Commission violated his right to equal protection because plaintiff, who was uninsured, was unable to meet his burden of producing medical evidence to support his claim that his injury was compensable.

This Court has held that, "[w]here a party appeals a constitutional issue from the Commission and fails to file a petition for *certiorari* or fails to have the question certified by the Commission, this Court is without jurisdiction." *Myles v. Lucas & McCowan Masonry*, 183 N.C. App. 665, 665, 645 S.E.2d 143, 143 (per curiam), *disc. review and cert. denied*, 361 N.C. 695, 654 S.E.2d 480 (2007). As in *Myles*, "there is no evidence in the record that the Commission has certified the question nor is there any evidence that a petition for *certiorari* was filed. Accordingly, we are without jurisdiction to hear this case." *Id.* at 665-66, 645 S.E.2d at 143-44. Consequently, plaintiff's appeal is dismissed.

Dismissed.

Panel Consisting of Judges HUNTER, Robert C., STEPHENS and ERVIN

Report per Rule 30(e).