An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1154

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

ANITA THOMPSON,
Employee,
Plaintiff-Appellant,

v.

North Carolina Industrial Commission
I.C. File No. 125834

FEDERAL EXPRESS GROUND PACKAGE SYSTEM, INC.,
Employer,

CRAWFORD & COMPANY,
Carrier,
Defendant-Appellees.

Appeal by plaintiff from order entered 23 March 2005 by the Industrial Commission. Heard in the Court of Appeals 13 April 2006.

Horn & Vosburg, P.L.L.C., by Martin J. Horn, for plaintiff-appellant.

McAngus, Goudelock & Courie, P.L.L.C., by Lois A. Waple and Joseph N. Hamrick, for defendant-appellees.

STEELMAN, Judge.

Plaintiff suffered a compensable injury by accident on 16 December 2000 during the course and scope of her employment with defendant Federal Express Ground Package System, Inc. (FedEx).

By opinion and award filed 1 September 2004, the Commission ordered plaintiff's referral at defendants' expense to Carolina Back Institute for evaluation to determine if plaintiff

was a candidate for treatment. Plaintiff was not accepted for treatment by Carolina Back Institute, and the parties were unable to agree on a treating physician to manage plaintiff's ongoing treatment. By order of the Commission through Commissioner Dianne C. Sellers, filed 28 October 2004, Dr. Thomas Giduz was designated as plaintiff's treating physician. Plaintiff submitted a motion to reconsider on 15 December 2004, requesting the Commission to modify its previous order and designate Dr. Steven Prakken as plaintiff's treating physician. Commissioner Sellers denied this motion, because it was not filed within 15 days of the entry of the Commission's order. Dr. Giduz refused to accept plaintiff as a patient, therefore Commissioner Sellers designated Dr. Veerainder Goli as plaintiff's treating physician by order filed 6 January 2005. Plaintiff filed motions to reconsider the previous orders in the matter and designate Dr. Motyka and Dr. Prakken as plaintiff's treating physicians; and to either have Commissioner Sellers voluntarily recuse herself from the matter, or be removed for good cause by the Commission. The Commission denied both of plaintiff's motions by order filed 2 February 2005. Plaintiff again moved to reconsider by letter mailed 10 February 2005, arguing that the 2 February 2005 order contained factual errors. By order filed 23 March 2005, Commissioner Sellers declined to address plaintiff's motion, stating: "It has recently come to the attention of the Commission that this issue is currently on appeal to the Court of Appeals, although neither party has informed the Commission of this fact in any prior correspondence." From this order finding a lack of jurisdiction, plaintiff appeals.

In plaintiff's sixth assignment of error, she contends the Industrial Commission erred in concluding it was divested of jurisdiction to consider plaintiff's motions to reconsider. We agree.

> The Industrial Commission is primarily an administrative agency of the State, and its jurisdiction as an administrative agency is a continuing one. The Industrial Commission acts in a judicial capacity only in respect to a controversy between an employer and

> employee. The existence of such a controversy, or an appeal from the determination of such a controversy, does not operate to divest the Commission of its administrative powers. Obviously, an appeal of an award of the Industrial Commission does not suspend that agency's authority to accept notification of an employee's decision to select his own doctor; neither does an appeal deprive the Commission of its jurisdiction to accept the submission of a claim. It may well be that the determination of the particular claim will be delayed until the outcome of the appeal. Nevertheless, the Commission has *jurisdiction* to receive the claim and is, in fact, the only agency vested with that jurisdiction.

Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 593-94, 264 S.E.2d 56, 64 (1980), *superceded by statute on other grounds as stated in, Franklin v. Broyhill Furniture Indus.*, 123 N.C. App. 200, 472 S.E.2d 382 (1996). We hold that the previous appeal to the Court of Appeals of the 1 September 2004 opinion and award did not divest the commission of jurisdiction to administer plaintiff's claim. In fact, the Commission is "the only agency vested with that jurisdiction." *Id*. The Commission therefore erred in refusing to address the merits of plaintiff's motion.

However, orders of the Industrial Commission pertaining to matters such as the designation of a treating physician are interlocutory, and not immediately appealable to the Court of Appeals from the Industrial Commission. "Until a final order or award has been entered by the Commission, defendant has no right of appeal." *Fisher v. E. I. Du Pont de Nemours*, 54 N.C. App. 176, 178, 282 S.E.2d 543, 544 (1981). Plaintiff makes no argument that this appeal is covered by any exception that would allow us to consider it in spite of its interlocutory nature. We therefore dismiss it. *Ledford v. Asheville Hous. Auth.*, 125 N.C. App. 597, 598-600, 482 S.E.2d 544, 545-46 (1997); *Plummer v. Kearney*, 108 N.C. App. 310, 312-13, 423 S.E.2d 526, 528-29 (1992).

DISMISSED.

Judges McCULLOUGH and CALABRIA concur.

Report per Rule 30(e).