An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-1708

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2004

GREGORY JORDAN,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 202577

OAKWOOD HOMES, Employer,

and

ESIS INSURANCE COMPANY,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 11 August 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 12 October 2004.

Hodgman and Oxner, by Todd P. Oxner, for plaintiff-appellee.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Terry L. Wallace for defendant-appellants.

THORNBURG, Judge.

Defendants appeal from an opinion and award of the Industrial Commission in a workers' compensation matter. At the time of the hearing before the Deputy Commissioner, plaintiff was 37 years old and worked for defendant, Oakwood Homes, as a loss mitigation specialist. Plaintiff's job consisted of collecting on delinquent accounts by contacting customers by phone

or through correspondence. Oakwood Homes is a publicly held corporation with its headquarters in Greensboro, North Carolina.

In September of 2001, the head of Oakwood Homes's loss recovery department approached plaintiff and other employees about working in a haunted house as part of the "Scare to Care" fundraising campaign to benefit the United Way's fund for victims of the 11 September 2001, terrorist attacks in New York City. Plaintiff agreed to volunteer.

On 27 October 2001, plaintiff participated in the haunted house, which was held in the parking lot at Oakwood Homes's headquarters. Plaintiff was dressed as a horror movie character, "Michael Meyers." When spectators entered his portion of the haunted house, plaintiff would sit up, "kill" a co-worker by pretending to stab her and then lunge toward the crowd. During one of these routines, the folding table on which plaintiff was lying collapsed and he fell from the table, injuring his back.

In an interlocutory opinion, the Deputy Commissioner found, in part:

> 3. Beginning in September of 2001, the head of the loss recovery department approached some of the employees in plaintiff's section about working in a haunted house as part of the "Scare to Care" fundraising campaign to benefit the United Way for victims of the September 11, 2001 terrorist attacks. Mike Rutherford, Vice-President of the defendant-employer, came up with the campaign slogan and ideas for the haunted house. Plaintiff agreed to volunteer for the event.
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> 4. The haunted house was sponsored during the week of October 25, 2001 through October 31, 2001. The event was publicized through the issuance of a press release which was released on Defendant's website and released to approximately four (4) area newspapers.
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> 5. Defendant used four (4) more or less dilapidated trailers that Oakwood Homes had built and later repossessed. Monies from local donations were used to gut and refurbish the mobile homes which were then decorated as "haunted houses" for the fundraiser. For the event, the "haunted houses" were positioned

> in the back parking lot of the Oakwood Homes corporate offices location.
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> 6. Approximately 111 employees participated in "Scare to Care," along with approximately eleven (11) others who were family members of the employees. Even though the employee participants were not paid for their time, and they were not formally reprimanded for not participating, employees were strongly encouraged to participate. Flyers were distributed to employees to encourage their participation, and employees were also asked to distribute advertising flyers at local businesses they patronize. In memoranda concerning the campaign that was distributed to employees, those employees who were scheduled to participate were described as "hard-working."
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> 9. To plaintiff's knowledge, no direct sales pitches were made on behalf of the defendant. However, by its own admission, defendant planned the "Scare to Care" event not only to raise donations for the United Way, but also to foster employee morale, encourage good health, and to create a good working environment for Oakwood Homes employees. The defendant therefore received a direct benefit from its employees' participation in this event, including the participation of the plaintiff.
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> 10. The greater weight of the competent, credible evidence produced at the hearing establishes, and the undersigned hereby finds that on October 27, 2001, plaintiff sustained a compensable injury by accident arising out of and in the course of his employment with the defendant-employer, resulting in injury to his back.

The Deputy Commissioner then concluded that plaintiff had sustained a compensable injury by accident arising out of and in the course of his employment. In a final opinion and award, the Deputy Commissioner adopted her previous findings, made further findings concerning plaintiff's medical treatment and defendant's actions regarding that treatment and the workers' compensation claim. The Deputy Commissioner then awarded plaintiff temporary partial

disability benefits and attorneys fees and fined defendant for violations of N.C. Gen. Stat. §97-88.2 and Commission rules.

Defendants appealed to the full Commission. The appeal questioned whether certain findings of fact in the interlocutory order and the final opinion and award were supported by competent evidence, thus resulting in incorrect conclusions of law. Defendants specifically took exception to the conclusion that plaintiff's injury by accident arose out of and in the course of his employment.

The full Commission affirmed the Deputy Commissioner's opinion and award with minor modifications. However, the modifications addressed plaintiff's medical treatment and Oakwood Homes's conduct in handling plaintiff's claim. The full Commission made no independent findings regarding the circumstances surrounding plaintiff's accident, finding instead: "The Findings of Fact made in the Interlocutory Opinion and Award of the Deputy Commissioner Stanback that was filed on September 12, 2002, are adopted and incorporated herein by reference." The full Commission went on to conclude: "The Conclusions of Law contained in the Interlocutory Opinion and Award by Deputy Commissioner Stanback filed on September 24[sic], 2002, are adopted and incorporated herein by reference."

The Industrial Commission is not an appellate court. *Joyner v. Rocky Mount Mills*, 92 N.C. App. 478, 482, 374 S.E.2d 610, 613 (1988). "It is a quasi-judicial agency with statutory authority to make findings of fact, state conclusions of law and enter an order resolving the issues between the employee and the employer and the employer's insurance carrier, if any, arising out of the application of the Worker's Compensation Act." *Vieregge v. N.C. State University*, 105 N.C. App. 633, 639-40, 414 S.E.2d 771, 775 (1992). "This Court has held that when the matter is 'appealed' to the full Commission pursuant to G.S. §97-85, it is the duty and

responsibility of the full Commission to decide all of the matters in controversy between the parties." *Id*. at 638, 414 S.E.2d at 774. Defendants, having filed a Form 44, "[are] entitled to have the full Commission respond to the questions directly raised by [their] appeal." *Id*. at 639, 414 S.E.2d at 774. By affirming and incorporating the Deputy Commissioner's findings and conclusions regarding whether plaintiff's injury by accident arose out of and in the course of his employment, the Commission failed to address the issue and thus failed to satisfy the Commission's statutory duty under N.C. Gen. Stat. §97-85.

The Commission erred in not addressing the issue of whether plaintiff's injury by accident arose out of and in the course of his employment. Upon remand, the Commission shall make its own findings of fact and conclusions of law and enter an order resolving this issue.

Vacated and remanded.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).