

Dismissed

Chair, Ballance

Concurring; Bolch

Bunn (Retired prior to decision) No. COA00-756

NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2001

BETTY TORRES,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. File Nos. 212973 & 746283

KELLY SPRINGFIELD TIRE CO.,
Employer,

and

TRAVELERS INSURANCE CO.,
Carrier,
Defendants.

Appeal by plaintiff and defendants from opinion and award
filed 10 April 2000 by the North Carolina Industrial Commission.
Heard in the Court of Appeals 16 May 2001.

*Jones and Jones, P.L.L.C., by Robert H. Jones, for plaintiff
appellant-appellee.*

*Cranfill, Sumner & Hartzog, L.L.P., by Samuel H. Poole, Jr.,
for defendant appellants-appellees.*

McCULLOUGH, Judge.

On 11 July 1987, plaintiff-employee Betty Torres injured her
right knee when she slipped and fell at her job as a roller die
operator in a plant operated by defendant-employer Kelly
Springfield Tire Co. (Kelly). Defendants admitted liability for
plaintiff's injuries and paid temporary total disability
compensation to plaintiff, who sustained a twenty percent permanent
partial impairment to her right leg. Plaintiff underwent several

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surgical procedures and eventually returned to work on 18 October 1991.

Plaintiff sustained a second compensable injury on 7 February 1992, when she fell backward and struck her head on a metal rail, sustaining injuries to her back, neck and both knees. Defendants admitted liability for plaintiff's cervical spine condition resulting from the injury, but denied causal relationships between the 7 February 1992 accident and plaintiff's knee conditions, as well as further deterioration of plaintiff's right knee and the 11 July 1987 accident. The deputy commissioner of the Industrial Commission who heard the matter concluded that plaintiff had suffered injury to both knees as a result of the 7 February 1992 accident, and that plaintiff had suffered a material change for the worse in her right knee as a result of the 11 July 1987 accident.

On 28 April 1994, surgeons performed a knee replacement operation on plaintiff's right leg. Following the surgery, plaintiff developed a contracture, causing complete immobility in her right knee. Because plaintiff could not bend or move her right knee, greater stress was placed on her left knee, causing its condition to deteriorate from mild to moderate impairment.

As plaintiff's left knee condition had deteriorated, plaintiff sought an increase in her disability payments based upon a substantial change of condition as authorized under N.C. Gen. Stat. § 97-47 (1999). Plaintiff further claimed that she is totally and permanently disabled, although she has not reached maximum medical improvement. A deputy commissioner at the North Carolina

Industrial Commission agreed with plaintiff, concluding that plaintiff is permanently and totally disabled. Defendants appealed to the Full Commission (Commission), which found that plaintiff's deteriorated left knee condition constitutes a change of condition under N.C. Gen. Stat. § 97-47. Further, the Commission concluded that plaintiff is entitled to compensation for all reasonably necessary medical treatment arising from her compensable injuries, including treatment by her family physician. Although plaintiff presented evidence tending to show that she is permanently and totally disabled, the Commission expressly reserved ruling on this issue until plaintiff undergoes further surgery, as plaintiff has not yet reached maximum medical improvement. Defendants and plaintiff now appeal the Commission's opinion and award.

Neither party addresses the issue of whether the opinion and award by the Commission is appealable at this time. An appeal from an opinion and award of the Industrial Commission is taken "under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions." N.C. Gen. Stat. § 97-86 (1999). Accordingly, an appeal of right lies only from such final orders or decisions by the Industrial Commission that determine the entire controversy between the parties. *Ledford v. Asheville Housing Authority*, 125 N.C. App. 597, 598-99, 482 S.E.2d 544, 545, *disc. review denied*, 346 N.C. 280, 487 S.E.2d 550 (1997). An opinion and award that settles preliminary questions of liability but leaves unresolved additional matters pending receipt of further evidence is interlocutory.

Beard v. Blumenthal Jewish Home, 87 N.C. App. 58, 61-62, 359 S.E.2d 261, 263 (1987), *disc. review denied*, 321 N.C. 471, 364 S.E.2d 918 (1988).

The present opinion and award on its face reserves the issue of whether plaintiff is totally and permanently disabled for future determination pending further evidence. There is nothing in the record to indicate that all of the matters in this case have been resolved, including the compensation to which plaintiff is entitled. It is our duty to dismiss an appeal *sua sponte* when no right of appeal exists. *Bailey v. Gooding*, 301 N.C. 205, 208, 270 S.E.2d 431, 433 (1980). We therefore dismiss this appeal as interlocutory.

Appeal dismissed.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).