

*An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-188

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2003

LEON McNAIR,  
Employee,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 248030

SUPERIOR CONSTRUCTION CO., INC.,  
Employer,

and

AETNA CASUALTY & SURETY, CO.,  
Carrier,  
Defendants.

Appeal by plaintiff from order filed 26 September 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 29 October 2003.

*Leon McNair pro se plaintiff-appellant.*

*Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Edward L. Eatman, Jr. and W. James Flynn, for defendant-appellees.*

BRYANT, Judge.

Leon McNair (plaintiff) appeals an order by the North Carolina Industrial Commission (the Commission) filed 26 September 2002 denying his motion for a review of the facts.

After sustaining a back injury on 2 July 1992 while working for Superior Construction Co., Inc., plaintiff filed a claim for workers' compensation benefits with the Commission.

Finding that plaintiff did not sustain a compensable injury by accident because he suffered from a pre-existing back condition that he had concealed from his employer, the Commission entered an opinion and award on 19 September 1996 denying plaintiff's claim. On appeal, this Court affirmed the Commission's ruling in an unpublished opinion specifically addressing plaintiff's claims of fraud and holding:

[P]laintiff makes four broadside arguments attacking the Full Commission's conclusions of law on the basis of fraud, evidence tampering, and the admission of his stipulated medical records. There is nothing in the record to support plaintiff's claims of fraud and evidence tampering. Plaintiff was represented by counsel when his medical records were stipulated into evidence, and he made no attempt to withdraw those stipulations until more than six weeks after giving notice of appeal to this Court from the Full Commission's Opinion and Award. His notice of appeal to this Court divested the Full Commission of jurisdiction to address the motions which he filed on 29 November 1996, and they are therefore nullities.

*McNair v. Superior Constr. Co.*, 127 N.C. App. 556, 492 S.E.2d 389 (1997) (No. COA97-157) (unpublished) (citing *Andrews v. Fulcher Tire Sales and Serv.*, 120 N.C. App. 602, 463 S.E.2d 425 (1995)).

---

The dispositive issue is whether, in light of the scope of plaintiff's notice of appeal, plaintiff has properly raised the assignments of error addressed in his brief to this Court.

Plaintiff takes his instant appeal from an order filed by the Commission on 26 September 2002 denying his motion to review the facts of the case. In this order, the Commission concluded that its 19 September 1996 "Opinion and Award and the Opinion of the Court of Appeals are final and the . . . Commission does not have jurisdiction to reconsider this claim." The eleven assignments of error discussed in plaintiff's brief, however, do not relate to the Commission's 26 September 2002 order currently on review. Instead, they challenge the Commission's findings

and conclusions contained in the earlier 19 September 1996 opinion and award, arguing the 1996 ruling was marred by “fraud, tampered evidence, disproved evidence, legal malpractice and neglect by attorneys’ stipulations.” As plaintiff’s notice of appeal limited the scope of the instant appeal to the Commission’s 26 September 2002 order denying plaintiff’s motion for review and plaintiff failed to assign error to any aspect of this order, we dismiss the appeal. *See* N.C.R. App. P. 3(d); *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990).

Dismissed.

Chief Judge EAGLES and Judge LEVINSON concur.

Report per Rule 30(e).