

Affirmed  
Author, Bolch  
Concurring: Scott  
Riggsbee

NO. COA00-1505

NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2001

CAROL CODY HUGHES,  
Employee-Plaintiff

v.

North Carolina  
Industrial Commission  
I.C. No. 279832

RHODES, INCORPORATED,  
Employer-Defendant

UNITED STATES FIRE INSURANCE CO.,  
Carrier-Defendants

Appeal by plaintiff from order filed 10 July 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 1 October 2001.

*Robert T. Hedrick for plaintiff-appellant.*

*Alexander H. Barnes for defendant-appellees.*

CAMPBELL, Judge.

The parties signed a "memorandum of understanding of the parties" following a mediated settlement conference on 19 November 1997. After executive secretary Tracey H. Weaver denied defendants' motion for approval of mediated settlement agreement, defendants filed an application for review. Deputy Commissioner William C. Bost heard the matter and filed an order on 19 May 2000 in which he concluded that the "memorandum of agreement is enforceable as a Compromise Settlement Agreement under I.C. Rule 502." On 31 May 2000, Deputy Commissioner Bost filed an amended

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order in which he ordered that the "mediated settlement agreement, as modified, be and the same is hereby approved."

On 16 June 2000, plaintiff gave notice of appeal to the Full Commission from the deputy commissioner's 19 May 2000 order. After finding nothing in the record to indicate that the compromise settlement agreement had been approved, the Full Commission disapproved that agreement in an order filed 20 June 2000. Defendants then filed motions seeking to have the Full Commission reconsider, set aside and vacate its order of 20 June 2000 and to dismiss plaintiff's appeal.

In an order filed 10 July 2000, the Full Commission vacated its 20 June 2000 order and dismissed plaintiff's appeal, stating that "the appeal by plaintiff from Deputy Commissioner William C. Bost's Order filed May 19, 2000 is hereby dismissed as not being filed within 15 days of notice of such order." Plaintiff gave notice of appeal on 27 July 2000 from the Full Commission's order of 10 July 2000. Defendants filed a motion to dismiss the appeal, which the Full Commission denied on 15 September 2000. From the Full Commission's order of 10 July 2000, plaintiff appeals.

Plaintiff contends the Full Commission erred by vacating its order of 20 June 2000. She argues the Full Commission failed to find that the deputy commissioner's order was in her best interest and that it complied with North Carolina Industrial Commission Rule 502 (Compromise Settlement Agreements). We are not persuaded by plaintiff's argument.

As an initial matter, plaintiff's notice of appeal to the Full

Commission made no reference to the deputy commissioner's amended order of 31 May 2000, despite the fact that the amended order was filed before plaintiff gave notice of appeal from the deputy commissioner's original order. The Full Commission's order of 20 June 2000 refers only the 19 May 2000 order filed by the deputy commissioner. It does not appear that plaintiff included the amended order (which approved the compromise settlement agreement) in the record to the Full Commission, for the Full Commission found in its 20 June 2000 order that "[n]othing in the record indicates that this compromise settl[e]ment agreement has been approved by the Industrial Commission . . . ."

Pursuant to N.C. Gen. Stat. § 97-85 (1999), "[i]f application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award . . . ." Plaintiff filed her notice of appeal on 16 June 2000, which was twenty-eight days after the deputy commissioner filed the original order. The Full Commission therefore did not err in vacating its 20 June 2000 order and in dismissing plaintiff's appeal.

Affirmed.

Judges HUNTER and BIGGS concur.

Report per Rule 30(e).