

Dismissed

NO. COA00-278

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2000

**FILED**

DEC 19 2000

IN THE OFFICE OF  
CLERK COURT OF APPEALS  
OF NORTH CAROLINA

SYLVIA JOHNSTON,  
Employee-Plaintiff

v.

U.S. AIR EXPRESS/  
C.C. AIR, INC.,  
Employer-Defendant

and

HARTFORD ACCIDENT &  
INDEMNITY COMPANY,  
Carrier-Defendant

North Carolina  
Industrial Commission  
I.C. No. 530746

Appeal by defendants from opinion and award filed 6 January 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 December 2000.

*McCotter, McAfee & Ashton, PLLC, by Robert J. McAfee, for plaintiff-appellee*

*Morris York Williams Surles & Darringer, LLP, by Stephen Kushner, for defendant-appellants.*

WALKER, Judge

This appeal originates from plaintiff's claim for workers' compensation benefits arising out of injuries she allegedly sustained on or about 1 October 1994 and 29 January 1995. A deputy commissioner filed an opinion and award on 1 July 1998 denying plaintiff's claim on the ground that she did not timely file her claim within two years after the date of either incident or the last payment of medical compensation when no other compensation has

0311

been paid pursuant to N.C. Gen. Stat. § 97-24(a). Plaintiff appealed to the Full Commission. After reopening the evidence and receiving additional evidence, the Commission filed an opinion and award on 6 January 2000, in which it concluded that plaintiff did timely file a claim within two years after the date of last payment of medical compensation. The Commission remanded the case for a hearing before a deputy commissioner to resolve all remaining issues presented by the parties.

An appeal from an opinion and award of the Industrial Commission is taken to this Court "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). "Consequently, an appeal of right lies only from a final order or decision of the Industrial Commission[.]" *Riggins v. Elkay Southern Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999). An opinion and award holding a plaintiff's claim has been timely filed pursuant to N.C. Gen. Stat. § 97-24 is essentially an order denying a motion to dismiss for lack of subject matter jurisdiction. See *Reinhardt v. Women's Pavilion*, 102 N.C. App. 83, 401 S.E.2d 138 (1991). As such, it is not immediately appealable prior to entry of a final decision. *Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 293 S.E.2d 182 (1982).

The present opinion and award is interlocutory as it reserves issues for further determination. For the foregoing reasons, it is not immediately appealable and we must dismiss an appeal *sua sponte*

when no right of appeal exists. *Riggins*, 132 N.C. App. 232, 510  
S.E.2d 674.

Dismissed.

Judges GREENE and FULLER concur.

Report per Rule 30(e).