

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-1527
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

NORMAN HATLEY,
Plaintiff-Employee,

v.

North Carolina
Industrial Commission
I.C. No. 569479

CONTINENTAL GENERAL TIRE,
Employer, and GALLAGHER
BASSETT SERVICES, Carrier,
Defendants.

Appeal by plaintiff from order entered 20 September 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 27 April 2011.

The Sumwalt Law Firm, by Mark T. Sumwalt and Vernon Sumwalt, for plaintiff-appellant.

Smith Moore Leatherwood LLP, by Jeri L. Whitfield, Matthew Nis Leerberg, and Elizabeth Brooks Scherer, for defendant-appellees.

STEELMAN, Judge.

Where defendant timely appealed both the Deputy Commissioner's and the Full Commission's Opinion and Award in favor of plaintiff, payment of compensation benefits did not become due until all appeals were exhausted. The Full

Commission properly denied plaintiff's motion for a ten percent late payment penalty pursuant to N.C. Gen. Stat. § 97-18(g).

I. Factual and Procedural Background

The facts of this case are not disputed. On 28 September 2005, Norman Hatley (plaintiff) was employed as a tire inspector with Continental General Tire (defendant). On that day, a tire he was inspecting "blew off the rim" and plaintiff's left hand was lodged into the metal housing above it. Plaintiff's left hand was bloodied and scratched, and his ring finger was broken. Plaintiff returned to work in a light duty position on 11 October 2005. On 12 October 2005, defendant filed a form 60 admitting liability for temporary partial compensation. Plaintiff was paid partial disability benefits through 19 February 2006 when he retired from his position with defendant. No further payments were made to plaintiff.

On 25 August 2006, plaintiff accepted a job as a teacher's assistant with the Gaston County school system. Plaintiff subsequently commenced a proceeding in the Industrial Commission asserting that he was entitled to temporary total disability benefits from the time he retired until he obtained his teaching assistant position, as well as ongoing temporary partial

disability benefits based upon a significant decrease in wages. Defendant denied these claims.

On 20 March 2009, the Full Commission awarded plaintiff temporary total disability compensation in the amount of \$704.00 per week for the time period of 19 February until 25 August 2006. Plaintiff was also awarded temporary partial disability compensation equal to two-thirds of the difference between his pre-injury average weekly wage and his wages upon returning to work for the Gaston County school system, to be continued for a maximum of 300 weeks or until he earned the same or greater than his pre-injury wages.

Defendant appealed to the Court of Appeals, which affirmed the Opinion and Award of the Full Commission on 6 April 2010. See *Hatley v. Continental Gen. Tire*, ___ N.C. App. ___, 692 S.E.2d 488 (2010) (unpublished). On 21 May 2010, defendant paid plaintiff \$152,875.46 in principal and \$20,798.54 in interest.

Plaintiff subsequently filed a motion seeking the imposition of a ten percent penalty pursuant to N.C. Gen. Stat. § 97-18(g) and *Roberts v. Dixie News, Inc.*, 189 N.C. App. 495, 658 S.E.2d 684 (2008), for untimely payment of indemnity benefits originally ordered by a Deputy Commissioner. On 20 September 2010, the Full Commission denied plaintiff's motion.

Plaintiff appeals.

II. Ten Percent Late Payment Penalty

In his only argument, plaintiff contends that the Commission erred by denying his motion for the imposition of a ten percent late payment penalty. We disagree.

This case is controlled by two prior decisions of this Court, *Norman v. Food Lion*, ___ N.C. App. ___, ___ S.E.2d ___ (July 19, 2011) (No. COA10-1175) and *Morales-Rodriguez v. Carolina Quality Exteriors, Inc.*, ___ N.C. App. ___, 698 S.E.2d 91 (2010). In *Norman*, this Court held that: "pursuant to N.C. Gen. Stat. §§ 97-18 and 97-86, payment of workers' compensation benefits under an award of the Industrial Commission does not become due until all appeals are exhausted or a party waives the right to appeal." ___ N.C. App. at ___, ___ S.E.2d at ___.

Norman further distinguished the case of *Roberts, supra*, upon which plaintiff relies. *Id.* at ___, ___ S.E.2d at ___. We are bound by these decisions. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

AFFIRMED.

Judges STEPHENS and HUNTER, JR., ROBERT N., concur.

Report per Rule 30(e).