

Affirmed
Author, Riggsbee
Concurring, Mauretic
Sellers

NO. COA00-1137

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NORTH CAROLINA COURT OF APPEALS

Filed: 20 November 2001

COURT OF APPEALS
OF NORTH CAROLINA

AUBREY BOONE,

Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. 653203

HOME INSURANCE/RISK ENTERPRISE
MANAGEMENT,

Employer,

SELF-INSURED,
(GAB Business Services),

Servicing Agent,
Defendant.

Appeal by plaintiff from opinion and award of the North Carolina Industrial Commission filed 19 April 2000. Heard in the Court of Appeals 28 September 2001.

Aubrey Boone, pro se, plaintiff appellant.

Morris York Williams Surlis & Barringer, L.L.P., by William J. Garrity, for defendant appellees.

TIMMONS-GOODSON, Judge.

On 18 March 1998, Aubrey G. Boone ("plaintiff") filed a Form 18, Notice of Accident to Employer claim with his employer, Risk Enterprise Management ("Risk Enterprise"), alleging that he had developed an occupational disease arising out of his job as an auditor. Specifically, plaintiff asserted that he suffered from job-related stress, and that such stress began on 18 September

1995. On 24 September 1998, the matter came before a deputy commissioner of the North Carolina Industrial Commission, who denied plaintiff's claim. Appealing *pro se* to the Full Commission, plaintiff attempted to submit additional evidence supporting his claim, which evidence the Full Commission declined to consider.

The competent evidence of record before the Full Commission tended to show the following: Risk Enterprise hired plaintiff in November 1972 as a premium auditor. Following a series of business acquisitions and adjustments, plaintiff eventually became responsible for all of Risk Enterprise's North and South Carolina policyholders. In late 1992, plaintiff began experiencing difficulties with his work. Plaintiff testified that he became "more and more consumed" with "trying to be perfect, no overdues, no errors, no anything." In his effort to attain "perfection" in his employment, plaintiff began working six to seven days every week. According to plaintiff, he "turned into - an already perfectionist into a perfectionist [until] . . . it got out of control."

On 5 November 1993, plaintiff's physician advised him that he suffered from job-related stress and prescribed medication to treat this condition. In September 1995, plaintiff stopped working and began receiving short-term disability benefits, as he could no longer effectively function in his employment. On 2 January 1996, a specialist diagnosed plaintiff as suffering from obsessive-compulsive disorder. Plaintiff began receiving long-term disability benefits on 18 March 1998.

Upon consideration of the evidence, the Industrial Commission concluded that plaintiff had failed to produce competent medical evidence establishing that his job placed him at an increased risk of developing psychological problems. The Commission further concluded that, even if plaintiff had alleged a compensable occupational disease, he had failed to file his claim within two years of the diagnosis of such disease, and that therefore plaintiff's claim was barred in accordance with North Carolina General Statutes section 97-58.

Plaintiff now appeals from the opinion and award of the Industrial Commission.

The dispositive issues on appeal are whether the Industrial Commission erred in concluding (1) that plaintiff failed to produce competent evidence to support his claim and (2) that plaintiff's claim was untimely. For the reasons set forth herein, we affirm the opinion and award of the Industrial Commission.

We note initially that plaintiff has failed to comply with the Rules of Appellate Procedure in numerous ways. For example, plaintiff's brief violates Rule 26(g) in both the margins and point type. See N.C.R. App. P. 26(g) (2001) (requiring one-inch margins and "at least 11 point type"). Violation of Rule 26(g) subjects an appeal to dismissal. See N.C.R. App. P. 25(b) (2001); *H.B.S. Contractors v. Cumberland County Bd. of Education*, 122 N.C. App. 49, 51, 468 S.E.2d 517, 519, *disc. review improvidently allowed*, 345 N.C. 178, 477 S.E.2d 926 (1996). Moreover, this Court granted

plaintiff's numerous motions for extensions of time in which to submit his brief. The final order by this Court allowed plaintiff to file his brief "on or before 22 January 2001." Plaintiff did not file his brief until 24 January 2001, however, thereby violating Rule 13(a)(1). See N.C.R. App. P. 13(a)(1) (2001). Finally, plaintiff raises several new issues in his filed brief and attempts to inject new evidence never considered by the Industrial Commission, in violation of Rule 9. See N.C.R. App. P. 9(a) (2001); *Horton v. New South Ins. Co.*, 122 N.C. App. 265, 268, 468 S.E.2d 856, 858, *certs. denied*, 343 N.C. 511, 472 S.E.2d 8 (1996).

Failure to comply with the Rules of Appellate Procedure subjects an appeal to dismissal, regardless of whether the plaintiff is proceeding *pro se*. See *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (*per curiam*). In our discretion, however, we have considered plaintiff's appeal on its merits. See N.C.R. App. P. 2 (2001) (allowing suspension of procedural rules).

After careful consideration of the entire record, we determine the Industrial Commission did not err in denying plaintiff's claim for compensation relating to his stress and obsessive-compulsive disorder. Plaintiff presented no evidence, medical or otherwise, that his job was a significant contributing factor in the development of his stress or that his job placed him at an increased risk of developing any psychological disorders. See *Harvey v. Raleigh Police Dept.*, 96 N.C. App. 28, 35, 384 S.E.2d 549, 553 (upholding Industrial Commission's determination that

plaintiff failed to prove that job stress was a significant causal factor in the development of employee's depression), *disc. review denied*, 325 N.C. 706, 388 S.E.2d 454 (1989). Furthermore, North Carolina General Statutes section 97-58 requires an employee to file a claim with the Industrial Commission within two years after disablement and within two years after the date upon which the employee was first informed by competent medical authority of the work-related nature of his condition. See N.C. Gen. Stat. § 97-58(b)-(c) (1999). Plaintiff testified that his physician advised him on 5 November 1993 that he suffered from job-related stress. Plaintiff stopped working and began receiving short-term disability benefits on 18 September 1995. Plaintiff did not file his claim with the Industrial Commission, however, until 11 March 1998, more than two years after going on short-term disability for his medical condition. The Industrial Commission therefore did not err in concluding that plaintiff's claim was barred by North Carolina General Statutes section 97-58. The opinion and award of the Industrial Commission is therefore

Affirmed.

Judges MCGEE and BIGGS concur.

Report per Rule 30(e).