

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-1734

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2003

ANDREW GILREATH,
Employee,
Plaintiff;

v.

North Carolina Industrial Commission
I.C. File No. 917389

YELLOW CAB OF CHARLOTTE,
Employer,

UNINSURED,

and/or

CAROLINA TRANSPORTATION CO., INC.,
Employer;

CNA INSURANCE COMPANY,
Carrier,

or

UNINSURED,
Defendant(s).

Appeal by defendant from opinion and award entered 4 October 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 27 October 2003.

The Law Offices of William K. Goldfarb, by William K. Goldfarb, for plaintiff-appellee.

Gilpin, Hatcher & Spransy, by David W. Gilpin, for defendant-appellant.

HUDSON, Judge.

Plaintiff filed a workers' compensation claim with the North Carolina Industrial Commission (the Commission) seeking benefits for injuries he sustained while driving a taxicab for defendant-employer on 23 December 1998. In an opinion and award filed 8 December 2000, a deputy commissioner concluded that plaintiff was an independent contractor not covered by the Workers' Compensation Act. On review, the Full Commission entered an opinion and award reversing the deputy commissioner's decision and finding plaintiff a covered employee. The Commission further found that plaintiff had sustained a compensable injury by accident in the course and scope of his employment with defendant, and remanded the matter to the deputy commissioner to take additional evidence and determine what benefits are due. The Commission also referred the matter to its Fraud Unit for investigation of the defendant-employer's actions. Defendant appeals.

Defendant challenges the findings and conclusions that plaintiff was an employee and that he suffered an injury arising out of his employment. We do not reach defendant's substantive arguments, because the Commission's ruling is interlocutory and not subject to immediate appeal.

An appeal from an opinion and award of the Industrial Commission is subject to the "same terms and conditions as govern appeals for the superior court to the Court of Appeals in ordinary civil actions." G.S. §97-86 (2001). Parties have a right to appeal any final judgment of a superior court. G.S. §7A-27 (2001). Therefore, an appeal as of right can arise only from a final order of the Industrial Commission. *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002).

"A final judgment is one that determines the entire controversy between the parties, leaving nothing to be decided in the trial court." *Id.* We have said that "[a]n opinion and award of

the Industrial Commission is interlocutory if it determines one but not all of the issues in a workers' compensation case." *Ratchford*, 150 N.C. App. at 199, 564 S.E.2d at 247; see also *Fisher v. E.I. Dupont De Nemours*, 54 N.C. App. 176, 177-78, 282 S.E.2d 543, 544 (1981) (holding that an order is not final where the amount of compensation is not determined). Moreover, while we recognize that a workers' compensation claim may continue under an open award for many weeks or even years, an opinion and award that on its face contemplates further proceedings or which does not fully dispose of the pending stage of the litigation is interlocutory. See *Riggins v. Elkay Souther Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999) ("An opinion and award that settles preliminary questions of compensability but leaves unresolved the amount of compensation to which the plaintiff is entitled and expressly reserves final disposition of the matter pending receipt of further evidence is interlocutory").

Here, the Full Commission "remanded to the deputy commissioner . . . for the taking of additional evidence and entry of an Opinion and Award as to what benefits plaintiff is entitled to receive." This ruling is not final and is thus not subject to immediate review. See *Watts v. Hemlock Homes of the Highlands, Inc.*, __ N.C. App. __, __, 584 S.E.2d 97, 99 (2003).

Rule of Appellate Procedure 28(b)(4) requires the appellant to include in its brief to this Court a "statement of grounds for appellate reviewWhen an appeal is interlocutory, the statement must contain sufficient facts and arguments to support appellate review on the ground that the challenged order affects a substantial right." It is well established that the appellant bears the burden of making this showing and the court is not required to construct the grounds for the parties. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 253 (1994). The appellant's brief here contains no statement of the grounds for appellate review, and

no showing of why the Court should review this interlocutory order. Accordingly, we dismiss defendant's appeal *ex mero motu* for want of jurisdiction.

Dismissed.

Judges MCGEE and GEER concur.

Report per Rule 30(e).