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NO. COA02-836

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2003

JAMES MAX TRANTHAM,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 918613

VOLVO CONSTRUCTION EQUIPMENT,
Employer,

and

AMERICAN PROTECTION INSURANCE
COMPANY,
Carrier,
Defendants

Appeal by defendants from Opinion and Award of the North Carolina Industrial Commission filed 19 February 2002. Heard in the Court of Appeals 15 April 2003.

Richard B. Harper for plaintiff-appellee.

W. Kevin McLaughlin for defendants-appellants.

TYSON, Judge.

Volvo Construction Company (“Volvo”) and American Protection Insurance Company (collectively “defendants”) attempts to appeal from the 19 February 2002 order of the Industrial Commission (“Commission”) denying review of the Interlocutory Opinion and Award of Deputy

Commissioner Mary Moore Hoag (“Deputy Commissioner”) filed on 23 January 2002. We dismiss the appeal as interlocutory.

I. Background

On 19 February 1999, James Max Trantham (plaintiff) sustained an injury by accident that admittedly arose out of and in the course and scope of his employment with Volvo. Plaintiff received temporary total disability benefits until 29 August 1999. Plaintiff alleged an inability to continue working because of chronic back pain and depression resulting from the injury. On 12 December 2000, plaintiff filed a Form 33 request for hearing for workers’ compensation benefits. On 29 December 2000, defendants denied plaintiff’s disability to the extent claimed.

On 25 June 2001, the parties mediated, per the Commission’s order, and agreed plaintiff would submit to independent medical and vocational assessments. On 10 October 2001, defendants were ordered to “identify and make appointments with doctors of their choosing within thirty (30) days.” Defendants requested and were granted an extension on “the period of time for scheduling [independent medical examinations] for plaintiff” until 9 December 2001.

On 1 December 2001, defendants scheduled the independent medical examinations for 7 February 2001. Plaintiff informed the Deputy Commissioner of that date on 17 December 2001. On 28 December 2001, the Deputy Commissioner found:

Defendants requested an extension of time in which to schedule Independent Medical Examination for plaintiff. This motion was granted giving defendants until 9 December 2001. It was the intent of the undersigned that examination be complete by that date. However, attorney for defendants has unilaterally taken it upon himself to inform his clients that they need not schedule examination until February. This postponement will result in extreme hardship for plaintiff.

Defendants were ordered to pay (1) plaintiff temporary total disability from 9 December 2001 until further order, (2) \$2000.00 dollars in reasonable attorneys' fees and (3) every fourth check to plaintiff's attorney.

On 2 January 2001, plaintiff moved for reconsideration and for a stay of the 28 December 2001 order. On 23 January 2002, the Deputy Commissioner denied "Defendant's request to reconsideration [sic] granting of benefits and to stay the previous order for benefits" and ordered that "the 2001 Order reinstating benefits shall stand."

On 4 February 2002, defendants requested a hearing before the Commission to "appeal Deputy Commissioner Hoag's order dated 1/23/02 requiring payment of TTD benefits and attorney's fees prior to an adjudication of the underlying claim. Defendants further request[ed] that Deputy Commissioner Hoag's Order be stayed pending a final determination of the underlying claim." On 19 February 2002, the Commission found "that this was an interlocutory opinion and award and appeal to the Full Commission is improper at this time" and denied defendants' request for a hearing. The Commission's order stated "Following the issuance of Deputy Commissioner Hoag's final Opinion and Award, defendants may raise these issues on appeal to the Full Commission pursuant to N.C.G.S. §97-85."

II. Issue

Defendants assign error to the Commission's denial of their request for hearing.

III. Interlocutory

An appeal from an opinion and award of the Industrial Commission is subject to the "same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions." Parties have a right to appeal any final judgment of a superior court. Thus, an appeal of right arises only from a final order or decision of the Industrial Commission. A final judgment is one that determines the entire controversy between the parties, leaving nothing to be decided in the trial court.

Ratchford v. C.C. Mangum, Inc., 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002) (citations omitted). The Commission's order does not determine the entire controversy and is not a "final order or decision of the Industrial Commission." *Id.* The Commission allowed defendants to appeal "[f]ollowing the issuance of Deputy Commissioner Hoag's final Opinion and Award." This appeal is dismissed as interlocutory.

Appeal dismissed.

Judges WYNN and STEELMAN concur.

Report per Rule 30(e).