

Workers' Compensation Act (1929):

Compromise: The Workers' Compensation Act allows a worker to receive sure and quick benefits without showing negligence on behalf of the employer or having to defend against any contributory negligence of his own. In exchange, the worker cannot sue the employer.

Initial hearing before Deputy Commission:

Receives evidence

Produces an order: findings of fact, conclusions of law

Appeal to Full Commission:

Reconsider evidence, receive further evidence, rehear parties, new decision

Ultimate fact finder; sole judge of credibility of witnesses even though reviews cold record

Appeal to Court of Appeals:

3 Questions:

- 1) Is there competent evidence in the record to support the findings of fact; and
- 2) Do the findings of fact support the conclusions of law; and
- 3) Has the law been properly applied?

Review by the Supreme Court of NC

Two avenues:

- 1) Appeal of right: Dissent or **Substantial** constitutional question (7A-30)
- 2) Petition for Discretionary Review (N.C.G.S. § 7A-31)

Statutory criteria for Petition for Discretionary Review

- 1) Significant public interest; or
- 2) Legal principles of major significance to the jurisprudence; or
- 3) Conflict with prior decision of Supreme Court

Recent cases at the Supreme Court:

Wilkes v. City of Greenville, ___ N.C. ___, 777 S.E.2d 282 (2017); The Supreme Court held that when an employer admits compensability for physical injuries sustained on the job, treatment of anxiety and depression is presumed to be directly related to the physical injuries. In addition, the worker is entitled to continued payment of temporary total disability benefits because evidence demonstrated that any attempt by claimant to find other employment would be futile. The Court remanded for findings of fact on the issue of plaintiff's entitlement to additional benefits.

House Bill 26, signed into law on 20 July 2017, is a legislative response to *Wilkes v. City of Greenville* that requires the form prescribed by the Commission to identify the injury or condition as causally related to the compensable injury:

An award of the Commission arising out of G.S. 97-18(b) or G.S. 97-18(d) shall not create a presumption that medical treatment for an injury or condition not identified in the form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d) is causally related to the compensable injury. An employee may request a hearing pursuant to G.S. 97-84 to prove that an injury or condition is causally related to the compensable injury.

. . . .

[I]t is the intent of the General Assembly to clarify, in response to *Wilkes v. City of Greenville*, that an injury not identified in an award arising out of G.S. 97-18(b) or G.S. 97-18(d) is not presumed to be causally related to the compensable injury to reflect the intent of the General Assembly when it enacted S.L. 2011-287.

Moreover, House Bill 26 rewrites portions of section 97-90(f) regarding disputes over the division of fees between current and past attorneys:

If a dispute arises between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section, the Commission shall hear any dispute after the Commission has approved the settlement agreement. The Commission shall give notice to each of the employee's current and past attorneys of record of the total amount of the approved fee prior to determining how the fee shall be divided between those attorneys. An attorney who is an interested party to

an action under this subsection shall have the same rights of appeal as outlined in subsection (c) of this section.

Harrison v. Gemma Power Sys., LLC, __ N.C. __, 799 S.E.2d 855 (2017). The Supreme Court decided whether the Industrial Commission's findings of fact support the conclusion that plaintiff is not entitled to compensation for permanent partial disability. The Court held that the Industrial Commission had failed to carry out the Court of Appeals mandate that it make additional findings of fact and conclusions of law on the issue of plaintiff's entitlement to benefits under N.C.G.S. § 97-31. The Court reversed the decision of the Court of Appeals and remanded for the Commission to comply.

O'Neal v. Inline Fluid Power, Inc., __ N.C. __, 794 S.E.2d 474 (2016). After hearing oral arguments, the Court agreed that it improvidently allowed discretionary review, leaving the unanimous, unpublished Court of Appeals' decision to stand, which upheld the use of Form 63.

Cases pending at the Supreme Court:

David Easter-Rozzelle v. City of Charlotte, __ N.C. App. __, 780 S.E.2d 244 (2015); Argued at Supreme Court 28 August 2017, No. 52P16. Whether claimant's receipt of settlement proceeds from third party involved in the accident without employer's written consent precluded claimant from seeking benefits for injuries arising from automobile accident.

Bell v. Goodyear Tire and Rubber Company, et al., __ N.C. App. __, 798 S.E.2d 143 (2017); Petition for discretionary review pending at Supreme Court, No. 135P17. Whether evidence was sufficient to rebut the presumption that medical treatment for claimant's right bicep tendon was directly related to her compensable right shoulder injury; whether, once employer received notice that claimant's trial return to work was unsuccessful, employer was obligated to immediately reinstate claimant's disability compensation; and whether employer was subject to penalty of 10% on temporary total disability compensation benefits not paid to claimant following the end of her trial return to work.

Fagundes v. Ammons Dev. Grp., Inc., __ N.C. App. __, 796 S.E.2d 529 (2017); Petition for discretionary review, No. 70P17, denied by Supreme Court on 18 August 2017. Whether the Workers' Compensation Act provided the exclusive remedy, even if worker was engaged in an ultrahazardous occupation of rock blasting and whether safety violations established that supervisor committed willful, wanton and reckless negligence.

Saunders v. ADP TotalSource FI XI, Inc., __ N.C. App. __, 791 S.E.2d 466 (2016); Petition for discretionary review pending at Supreme Court, No. 399P16. Whether the Superior Court's jurisdiction to recognize an attorneys' fee agreement and deduct those fees from an award of retroactive attendant care compensation.