

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-852

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

ERNEST HILTON,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. 908923

PEP BOYS SERVICE,
Employer,

TRAVELERS PROPERTY &
CASUALTY CO.,
Carrier,
Defendants.

Appeal by defendants from opinion and award filed 15 February 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 26 March 2002.

Cox, Gage and Sasser, by Margaret B. DeVries, for plaintiff-appellee.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Sharon E. Dent, for defendant-appellants.

GREENE, Judge.

Pep Boys Service and Travelers Property & Casualty Co. (Travelers) (collectively, Defendants) appeal the opinion and award of the Full Commission of the North Carolina Industrial Commission (the Full Commission) filed 15 February 2001.

This appeal arises out of a Workers' Compensation claim filed

by Ernest Hilton (Plaintiff) after developing tendinosis and rupturing the biceps tendons in his right and left arms during the course and in the scope of his employment with Pep Boys Service as an installer. When Pep Boys Service and its Workers' Compensation carrier, Travelers, denied the compensability of Plaintiff's condition or injury, he requested that his claim be assigned for hearing.

A deputy commissioner heard this matter on 21 July 1999. After holding the record open for completion of the deposition of Plaintiff's treating orthopedist, the deputy commissioner entered an opinion and award denying Plaintiff's claim. Plaintiff appealed to the Full Commission, and upon reconsideration of the evidence, the Full Commission reversed the deputy commissioner's opinion and award. The Full Commission concluded:

Plaintiff's employment with [Pep Boys Service] caused or significantly contributed to his tendinosis condition and the ultimate rupture or tearing of his left . . . and . . . right biceps tendon[s] Additionally, [P]laintiff's employment with [Pep Boys Service] exposed him to an increased risk, as compared to members of the general public, of developing tendinosis which lead to the ultimate tearing of his left . . . and . . . right biceps tendon[s]

The Full Commission, however, found that the evidence of record was insufficient to determine "the periods and types of disability compensation [P]laintiff may be entitled to as [a] result of his occupational disease and causally related bilateral biceps tendon tears." The Full Commission, therefore, remanded the matter to the deputy commissioner for a further hearing on this matter.

Defendants gave notice of appeal from the opinion and award of the Full Commission on 16 March 2001.

The dispositive issue is whether Defendants' appeal should be dismissed as interlocutory.

As noted by Plaintiff, the Full Commission's opinion and award is by its very terms interlocutory and not immediately appealable. In *Riggins v. Elkay S. Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999), this Court explained that an appeal from an opinion and award of the Industrial Commission is governed by "the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions." Consequently, an appeal of right lies only from a final order or decision of the Industrial Commission, one that determines the entire controversy between the parties." *Id.* (citation omitted). Specifically, this Court noted that "[a]n 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." *Id.*

Since a further hearing is required on the issue of the periods and types of disability compensation to which Plaintiff may be entitled, as ordered by the Full Commission in this case, this appeal is dismissed as interlocutory. *See id.*

Dismissed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).