

RISK/ALERT

A TEAGUE CAMPBELL DENNIS AND GORHAM PUBLICATION

NOVEMBER 1999

CASE LAW UPDATE

*Supreme Court Affirms Ruling That
Claimant's Violation of Company Policy
By Leaving Work Station Does Not
Preclude Recovery of Benefits*

The North Carolina Supreme Court recently affirmed a decision of the North Carolina Court of Appeals involving a claimant who sought worker's compensation benefits for injuries sustained in the employer's parking lot. Claimant worked as a seamstress on a production line. She was informed by a co-worker, who was married to claimant's nephew, that the nephew had been in an automobile accident and that the co-worker was leaving work to check on him. The co-worker left the plant and claimant asked her teammate if she could go outside to see if the co-worker needed assistance. While in the parking lot, claimant fell due to icy conditions. A company policy prohibited personnel from being in the parking lot except at authorized times with the permission of a supervisor.

The defendants contended that claimant's presence in the parking lot was not related to her employment, but was a direct result of her nephew's automobile accident. The Industrial Commission agreed and denied the claim, finding that claimant's fall did not arise out of her employment. The Court of Appeals reversed in a 2-to-1 decision. The majority found it significant that neither claimant nor anyone else was disciplined for her actions on the day of her fall, the plant manager testified he probably would not have fired claimant for going outside without permission, and the employer had previously acquiesced in allowing employees to leave their work stations with the permission of other team members as opposed to the supervisor. The Court of Appeals was also persuaded by the argument that claimant believed her actions would benefit the employer in creating good will.

Consequently, it reversed the Industrial Commission's denial and remanded the case for entry of an award in favor of claimant.

The dissenting judge felt there was no evidence that claimant's injury resulted from an act incident to her employment, that it was a consequence of an increased risk of her employment, or that her actions had benefitted her employer; rather, they were for the benefit of a third party.

The Supreme Court affirmed the majority opinion of the Court of Appeals in a per curiam opinion without comment. *Choate v. Sara Lee Products* (citation omitted).

Risk Handling Hint: Recent appellate decisions have expanded past interpretations of the "arising out of" and "in the course of" employment requirements of N.C.G.S. §97-2. Employers and their risk managers should review cases of this type carefully, and strictly enforce applicable company policies.

*Supreme Court Accepts Discretionary
Review of Case Contesting the
Industrial Commission's Jurisdiction*

The North Carolina Supreme Court recently accepted discretionary review of a decision awarding North Carolina workers' compensation benefits to a truck driver who was employed by a trucking company located in Arkansas, dispatched out of Georgia and injured in an accident in South Carolina. Claimant's only connections to North Carolina are that he resides in the state and makes 18 to 20 percent of his stops here.

In response to claimant's contention that he is entitled to benefits in North Carolina, defendants argued that the employer had no terminals in this

state and the mere fact that claimant was a resident of North Carolina is insufficient to confer jurisdiction over his claim on the North Carolina Industrial Commission. However, the Commission and the Court of Appeals agreed with claimant and based their rulings on the fact that claimant is a resident of North Carolina.

The Supreme Court has accepted this law firm's Petition For Discretionary Review in order to review the Court of Appeals' finding that North Carolina has jurisdiction of this claim. *Perkins v. Arkansas Trucking Services, Inc.* (citation omitted).

RUMBLINGS AT THE INDUSTRIAL COMMISSION

✓ Assistant Attorney General Stephen Gheen, assigned to the Industrial Commission as its Agency Legal Counsel to aid in the investigation and prosecution of workers' compensation fraud, has announced that, at present, there are 44 cases of suspected fraud pending prosecution, most involving charges of employee fraud. At the same time, he is currently focusing his attention on more than 875 reports that employers have violated N.C.G.S. §97-94 by failing to obtain workers' compensation insurance. At least 50 such cases are presently being pursued at penalty hearings before deputy commissioners and another 178 are under active investigation by the Commission's fraud unit.

✓ Mr. Gheen has also announced the need for adoption of Industrial Commission rules and procedures adding language to the back of workers' compensation benefit checks whereby at the time of endorsement, the recipient certifies that he/she has not worked or earned wages during the period of time covered by the check. Consistent with that recommendation, the Fraud Committee of the Commission's Advisory Council is currently considering approval of (1) acceptable check endorsement language, (2) a written notice to be sent to those receiving weekly benefits that they must report all earnings they receive to their employer or its insurance carrier, and (3) creation

and utilization of a Report of Earnings form which workers receiving benefits will be periodically required to submit in order to avoid a suspension of benefits.

✓ On November 4, the Industrial Commission announced its intent to conduct a public hearing on December 17, 1999 to consider proposed amendments to its fee schedule for hospital inpatient bills utilizing DRG's (diagnostic related groupings) and would also make major revisions to its fee schedules for chiropractors and dentists, add provisions to the fee schedule for conferences between physicians and others, and change the billing method for anesthesia. Risk managers are encouraged to review the proposed amendments at the Industrial Commission's website, <http://www.comp.state.nc.us/ncichome.htm>, or request copies from Commissioner Thomas J. Bolch at 4336 Mail Service Center, Raleigh, N.C. 27699-4336. Requests to speak at the public hearing should be addressed to Commissioner Bolch at that same address, or by calling him at (919)733-1949. Written comments regarding the proposed amendments should be addressed to Commissioner Bolch and faxed or mailed no later than December 31, 1999.

✓ The Industrial Commission is also in the process of rewriting its rules and will be publishing proposed changes, which will be the subject of another public hearing, after the first of the year. Among the proposals it is considering are (1) an amendment to Rule 612 which would specifically authorize deputy commissioners to order that defendants pay the cost of supplying deposition transcripts to claimants' attorneys, and (2) adoption of a new rule requiring defendants to file a Form 60 admission of liability before paying medical bills, even in medical only cases.

✓ The Industrial Commission recently announced that it has narrowed its choice of a new Chief Claims Examiner to replace Pat Benton to two applicants, both of whom have substantial claims experience. An appointment is expected during the first week in December.