

# RISK ALERT

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## CASE LAW UPDATE

### *Denial of Benefits During Period of Incarceration Affirmed*

On September 20, in *Easton v. J.D. Denson Mowing*, a claim defended by TCDG attorneys Bruce Hamilton and Bill Bulfer, the Court of Appeals ruled that the Industrial Commission properly suspended the weekly benefits of a disabled claimant while he was incarcerated. It also found the defendants entitled to an immediate credit for payments erroneously made before they discovered claimant's incarceration.

Frank Easton suffered a compensable injury when he fell off a tractor. Later, while still receiving TTD, he was incarcerated for a probation violation, but several months passed before the defendants became aware of that fact. When they did, they filed a Form 24 application, requesting authority to suspend claimant's weekly benefit checks under the 1992 decision in *Parker v. Union Camp*.

Defendants' Form 24 was granted by the Executive Secretary's office and that decision was subsequently affirmed, first by a Deputy Commissioner and then by the Full Commission, which allowed the defendants an immediate credit of \$100 per week as an offset against

their ongoing obligation to pay TTD, so as to allow them to gradually recover the overpayment they had inadvertently made.

Easton appealed to the Court of Appeals, arguing that since his wife and two children were wholly dependent on him, the *Parker* case was distinguishable and his weekly TTD check should have been paid to his dependents without reduction during the period of his incarceration. He also argued that while the relevant statute, N.C.G.S. § 97-42, permits the Commission to shorten the period during which compensation is paid if a credit is awarded, it does not authorize the Commission to reduce the amount of a disabled worker's weekly check.

In the course of affirming in all respects defendants' successful defense in *Easton*, the Court of Appeals has firmly established the principle that, whether or not they are disabled and otherwise entitled to weekly benefits, injured workers are barred from receiving compensation while incarcerated, even if there are persons wholly dependent on them for support at the time.

In addition, the Court has established a new and important mechanism for defendants with credit

rights under N.C.G.S. § 97-42 to be reimbursed for overpayments made in cases in which the injured worker has been awarded compensation for an indefinite period of time and it is not possible to determine and shorten the length of time during which benefits are being paid. As a result of the holding in *Easton*, the Commission has been given both the discretion and authority to reduce the *amount* of claimant's weekly check, so as to allow the defendants whatever credit they are entitled to receive under N.C.G.S. § 97-42.

**Risk Handling Hint:** Risk managers are advised to be vigilant for the possibility that claimants with whom they are dealing become incarcerated, as it is now well established that in North Carolina, disabled employees are not entitled to TTD while imprisoned. And, thanks to the holding in *Easton*, when an overpayment of benefits has been made, the defense is entitled to an immediate credit, even if that means reducing claimant's weekly check, rather than shortening the period of disability. Because the latter can become a virtual impossibility in cases where ongoing awards of compensation have been entered and it is not clear whether claimant will ever receive a rating from which an overpayment could be deducted, the defense victory in *Easton* has established an important principle protecting the reimbursement rights of defendants under N.C.G.S. § 97-42.

*Claim Remanded to Determine Whether Disciplinary Action Constituted an Injury by Accident*

In October 1999, Kenneth Bursell and several other employees in the aircraft section of General Electric's Wilmington, North Carolina facility packed laptop computers into boxes for shipment to Ohio. Later, Bursell was called into a meeting with GE's human resources manager, who told him some of the computers he

packed were missing and that she had interviewed the others involved in the packing process, none of their stories matched, and he was being placed on "crisis suspension."

Bursell later testified that after returning to work the following week, he was harassed and called a thief by his co-workers, people constantly pointed at him, he became "nervous, panicky and paranoid," and as a result, he began receiving treatment from a psychiatrist and clinical psychologist. After two years of treatment, he was diagnosed with a variety of psychological disorders and found to be permanently and totally disabled.

After Bursell filed a claim for workers' compensation benefits alleging "psychiatric trauma" due to GE's "false accusation of theft," the Commission found that "as a result of being accused of stealing, fired and his treatment after he returned to work, plaintiff developed major depression with obsessions and possibly post-traumatic stress disorder, which led to ... incapacity to work." It also determined that claimant's "sudden meeting and abrupt firing" was "unexpected and not reasonably designed by [him]" and, as such, constituted an injury by accident. But, the Commission went on to conclude as a matter of law that although Bursell "has arguably shown unfair treatment by his employer, which was unexpected, ... that ... does not make it an 'unusual' or 'unforeseen' condition of his employment, under the rationale of *Woody [v. Thomasville Upholstery]*" (see *Risk Alert*, May 2002). As a consequence, it concluded claimant had not suffered a compensable injury by accident and it denied his claim.

In *Bursell v. General Electric Company*, the Court of Appeals has now remanded Bursell's claim back to the Commission for

additional findings, holding that the Commission's conclusion that he did not sustain an injury by accident was either directly contradicted or unsupported by certain findings of fact, including its finding that the "sudden meeting and abrupt firing of plaintiff due to accusations of stealing were unexpected and not reasonably designed by [him]." At the same time, the Court found that the Commission had also failed to make findings as to whether the disciplinary measures GE took against claimant were "legitimate personnel action[s]" and part of an "established sequence of operations," implying that if they were, they could not be characterized as an interruption of the normal work routine and, therefore, could not have given rise to an injury "by accident."

While GE had argued that it should not be held liable for the consequences of "legitimate personnel decisions," the Court was unwilling to agree that personnel actions can *never* involve an interruption of the normal work routine. However, it is also apparent from the language the Court used that it is hesitant to turn every disciplinary action into a potential workers' compensation claim.

**Risk Handling Hint:** The holding in *Bursell*, the Supreme Court's ruling in *Woody*, and other recent appellate decisions in stress cases, all provide a level of reassurance to risk managers that our appellate courts are reluctant to subject employers to liability for psychological claims arising out of routine employment actions, even those involving unusual fact patterns. Our courts' hesitancy to open up new avenues of recovery in such cases is appropriate, given the potential for abuse and huge influx of claims from every employee who feels wrongly treated, disciplined or fired which would result from application of a different test for compensability.