

# Look Before You Leap: The Perils of Filing a Form 60 Without Full Investigation

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In a recent case filed by the North Carolina Court of Appeals, an employer who no longer employed an employee was found responsible for a claim because they filed a Form 60 before properly investigating the matter.

In *Spivey v. Wright's Roofing and AMS Staff Leasing*, Wright's Roofing contracted with AMS Staff Leasing, a company that provides administrative services such as handling payroll, tax and workers' compensation insurance-related issues. As part of the contract, Mr. Wright would designate an employee as being "employed by" AMS Staff Leasing. Initially, Mr. Wright designated Plaintiff as employed by AMS Staff Leasing and AMS Staff Leasing paid Plaintiff for the work he performed.

However, after a brief lay off, Plaintiff returned to work with Wright's Roofing but was never designated as an employee of AMS Staff Leasing. Plaintiff was paid directly by Wright's Roofing. As such, he was not an employee of AMS Staff Leasing. After sustaining an injury, AMS Staff Leasing filed a Form 60 and began paying indemnity compensation. When AMS Staff Leasing subsequently discovered that Plaintiff was not, in fact, an employee at the time of the accident, they attempted to withdraw the Form 60.

Despite the error on AMS Staff Leasing's part, the Court held that an employer who files a Form 60 waives the right to contest a claim. The Court stated that a failure to properly investigate a claim prior to filing a Form 60 is not a reason for setting aside a Form 60.

How can you keep this from happening to your claims? Here are a few things to consider.

- Always make a proper investigation prior to filing a Form 60. This includes confirming with the insured that an employment relationship exists with the claimant. If you are unsure about whether to accept a claim, contact your attorney to discuss any possible defenses.
- Be specific in your filing. A Form 60 contains a space to provide a description of the accident and to list any injuries resulting from it. Specify the exact body part injured; otherwise, a vague Form 60 could be construed as unintentionally accepting additional claims by the Plaintiff. For example, if the Plaintiff initially reports a lumbar strain as a result of a motor vehicle accident, identify the body part as "lumbar spine" rather than "back." If the Plaintiff subsequently alleges a neck injury, the Form 60 could be used as evidence that the carrier already accepted the neck as a compensable injury.
- If you are unable to complete the investigation before the deadline to file a Form 60, consider filing a Form 63 to accept without prejudice to later deny, which will give you additional time to complete the

investigation. Just be sure to note the 90-day deadline from the date of notice of the injury or the claim will be deemed accepted.

- Remember, a Form 60 may be set aside only in very limited circumstances. The Industrial Commission must find evidence of fraud, material misrepresentation of facts, or mutual mistake. This is a narrowly interpreted standard, and the Commission will consider whether any alleged misrepresentations or mistakes of fact could have been discovered through due diligence and proper investigation prior to the filing of the Form 60.

By remembering a few things when filing a Form 60, you can save yourself a lot of trouble in the long run.

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