

NC Workers' Compensation Update: Extension of Parsons Presumption

October 21, 2015

Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

Wilkes v. City of Greenville

Plaintiff was involved in a compensable motor vehicle accident. Defendants filed a Form 60 accepting Plaintiff's neck, back, pelvis and hip injuries as compensable. Plaintiff sought additional medical treatment for anxiety and depression. Defendants denied the treatment as not related to his accepted injuries. Defendants argued that Plaintiff had the burden to establish medical causation and was not entitled to the *Parsons* presumption because Plaintiff's alleged anxiety and depression were not admitted in the Form 60. The *Parsons* presumption states that once an injury is accepted as compensable, there is a rebuttable presumption that additional medical treatment is directly related to the original compensable injury and that the employer has the burden of producing evidence that the treatment is not directly related. The NC Court of Appeals disagreed with Defendants' argument and applied the *Parsons* presumption to Plaintiff's request for additional medical treatment for anxiety and depression even though the conditions were not admitted in the Form 60. The case was referred back to the Commission to take further evidence to determine if the presumption was rebutted.

The next issue in this case involved the Full Commission's conclusion that Plaintiff was no longer entitled to temporary total disability benefits because Plaintiff failed to prove disability on the grounds that he did not present sufficient evidence that a job search would be futile. The Court of Appeals reversed the Full Commission's conclusion, holding that a plaintiff is not required to present medical evidence or the testimony of a vocational expert on the issue of futility. The Court concluded that evidence establishing Plaintiff's cognitive limitations, in combination with his age and lack of any other training, adequately demonstrated that searching for employment within his physical restrictions would be futile. The burden then shifted to the employer to show that suitable jobs were available and that Plaintiff was capable of obtaining a suitable job taking into account both his/her physical and vocational limitations.

This case is significant for two reasons. First, the Court of Appeals clarified prior case law stating that when a Form 60 is filed, the *Parsons* presumption applies to all injuries for which additional medical treatment is sought even those body/parts or conditions not previously accepted as compensable on the Form 60. Second, the Court of Appeals clarified that an employee is not required to offer expert testimony regarding the futility of a job search when trying to prove his disability. This decision was appealed to the Supreme Court for further review.

If you have questions regarding this case, please contact one of MGC's

This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation. Past success does not indicate the likelihood of success in any future legal representation