

Providing Benefits While Compensability is Under Investigation - NC Workers' Compensation

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At the onset of a workers' compensation claim, many times carriers do not have sufficient information to make a determination of compensability, yet often want to authorize medical treatment for a claimant to determine the extent of the claimant's injuries and answer potential questions about causation. This is where the North Carolina Industrial Commission (NCIC) Form 63, Section 2 comes into play. The NCIC Form 63, Section 2 permits carriers to pay medical compensation without prejudice to later deny the compensability of a claim.

Form 63, Section 1 permits a carrier to pay indemnity and medical compensation for 90 days without accepting the compensability of a claim. During the 90 days, the carrier is permitted to continue investigating a claim; carriers can request a thirty (30) day extension. If a carrier does not contest the compensability of a claim within 90 days (120 days if a 30 day extension is received), then the carrier waives the right to contest the claim.

Filing a Form 63, Section 2 means that a carrier is not subject to the 90-day requirement contained in Section 1. Section 2 explicitly notifies a claimant that payment of medical compensation is being made without prejudice to later deny the compensability of the claim. It goes on to notify the claimant that completion of Section 2 does not constitute an agreement to pay indemnity benefits under N.C. Gen. Stat. § 97-18(d).

North Carolina case law has reaffirmed that accepting a claim on a "medical-only" basis "cannot in any sense be deemed an admission of liability." *Biddix v. Rex Mills*, 237 N.C. 660, 664, 75 S.E.2d 777, 781 (1953); *cited with approval in Knight v. Cannon Mills Co.*, 82 N.C. App. 453, 467, 347 S.E.2d 832, 841 (1986), *disc. review denied*, 318 N.C. 507, 349 S.E.2d 861 (1986), *construed in Gore v. Mrytle/Mueller*, 362 N.C. 27, 653 S.E.2d 400 (2007). The North Carolina Court of Appeals recently held that the *Parsons* presumption does not apply when a carrier has accepted a claim on a medical-only basis. *Gross v. Gene Bennett Co.*, 209 N.C. App. 349, 703 S.E.2d 915 (2011). The *Parsons* presumption holds that when there has been a determination of compensability of a worker's injury, there is a presumption that additional medical treatment is causally related to the original injury. The *Parsons* presumption has been held to apply in cases where an employer or carrier has filed a Form 60 admitting the compensability of an injury. *Perez v. American Airlines/AMR Corp.*, 174 N.C. App. 218, 136, 620 S.E.2d 288, 293 (2005). *Perez* also held that a presumption of ongoing disability was created by a Form 21 Agreement, citing *Kisiah v. W.R. Kisiah Plumbing*, 124 N.C. App. 72, 77, 476 S.E.2d 434, 436 (1996).

The Court of Appeals in *Gross* distinguished its facts from those in the *Parsons*, *Perez* and *Kisiah* cases. In those cases, there was a prior determination of compensability – either by Order of the Commission, by admission of the employer or by agreement of the parties. This created a presumption that additional medical treatment was causally related to the original injury. By contrast, in *Gross*, there was no prior determination of compensability because the claim had only been accepted on a medical-only basis. The Court in *Gross* held that there was no presumption that the claimant’s medical diagnoses were causally related to the injuries sustained on the date of incident. The Court further held that the claimant failed to meet his burden of establishing medical causation and denied his claim for ongoing temporary total disability benefits.

The Form 63, Section 2 is an excellent option for carriers who do not have sufficient information to accept the compensability of a claim due to unresolved issues such as medical causation. A Form 63, Section 2 should also be used when a claimant has not missed more than seven days of work for an injury, and so is not entitled to receive temporary total disability benefits, or if there is a dispute regarding whether a claimant missed work due to his workers’ compensation claim. By filing a Form 63, Section 2, a carrier can ensure that a claimant’s medical treatment progresses without being prejudiced by an admission of compensability.

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