

Standards of Appellate Review in Workers' Compensation Cases

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The standard of review is critical in workers' compensation appeals. The outcomes of many appeals essentially turn on the standard of review, which often mandates deference to fact-finding by the Industrial Commission. Parties on appeal must identify the correct standard of review and then use that standard to their fullest advantage.

I. The Basic Standard of Review.

In general, appellate review of a substantive decision of the Industrial Commission is limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law. *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). This means that appellate courts defer to fact-finding, but not to legal conclusions.

The deferential standard of review for findings of fact is a defining feature of workers' compensation appeals. "The findings of fact by the Industrial Commission are conclusive on appeal if supported by any competent evidence." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977)). An appellate court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Id.* (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)).

This deferential standard of review for fact-finding is drawn from the Workers' Compensation Act. "Whether the full Commission conducts a hearing or reviews a cold record, N.C.G.S. § 97-85 places the ultimate fact-finding function with the Commission-not the hearing officer." *Id.* at 681, 509 S.E.2d at 413. "It is the Commission that ultimately determines credibility, whether from a cold record or from live testimony." *Id.*

"N.C.G.S. § 97-86 provides that "an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact." *Id.* at 681, 509 S.E.2d at 414 (quoting N.C. Gen. Stat. § 97-86). Therefore, "the findings of fact of the Industrial Commission are conclusive on appeal when supported by competent evidence, even though there be evidence that would support findings to the contrary." *Id.* (quoting *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965)).

It should be noted, though, that "evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Id.*

And, "findings of fact which are left unchallenged by the parties on appeal are "presumed to be supported by competent evidence" and are, thus "conclusively established on appeal." *Chaisson v. Simpson*, 195 N.C. App. 463, 470, 673 S.E.2d 149, 156 (2009) (quoting *Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118 (2003)).

Unlike findings of fact, the "Commission's conclusions of law are reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008).

With a mixed question of law and fact, if the proper findings of fact compel a conclusion different from that reached by the Commission, it is the duty of the appellate courts to reverse the Commission. *Fortner v. J.K. Holding Co.*, 319 N.C. 640, 643, 357 S.E.2d 167, 169 (1987) (also holding that whether an injury arose out of and in the course of employment is a mixed question of law and fact).

Finally, in distinguishing between findings of fact and conclusions of law, the denomination of the statement is immaterial. What matters is what type of determination is actually made. *See In re S.B.O.*, __ N.C. App. __, 764 S.E.2d 698 (2014). "Findings of fact are statements of what happened in space and time." *State ex rel. Utilities Comm. v. Eddleman*, 320 N.C. 344, 351, 358 S.E.2d 339, 346 (1987). "A determination which requires the exercise of judgment or the application of legal principles is more appropriately a conclusion of law." *Guox v. Satterly*, 164 N.C. App. 578, 582, 596 S.E.2d 452, 455 (2004).

II. Review of Jurisdictional Issues.

The basic standard of review is altered for jurisdictional issues so that appellate review is completely *de novo*. The most common issue is whether the plaintiff was an employee or an independent contractor at the time of injury, which the courts have deemed a jurisdictional fact. *Lucas v. Li'l Gen. Stores*, 289 N.C. 212, 218, 221 S.E.2d 257, 261 (1976); *Morales-Rodriguez v. Carolina Quality Exteriors, Inc.*, 205 N.C. App. 712, 714, 698 S.E.2d 91, 93 (2010).

"[T]he finding of a jurisdictional fact by the Industrial Commission is not conclusive upon appeal even though there be evidence in the record to support such finding." *Lucas*, 289 N.C. at 218, 221 S.E.2d at 261. "The reviewing court has the right, and the duty, to make its own independent findings of such jurisdictional facts from its consideration of all the evidence in

the record.ö *Id.* Legal conclusions in this context are still reviewed *de novo*. *McRae*, 358 N.C. at 496, 597 S.E.2d at 701.

öAppellate courts decide disputed issues of jurisdictional fact based on the greater weight of the evidence.ö *Campos-Brizuela v. Rocha Masonry, L.L.C.*, 216 N.C. App. 208, 211, 716 S.E.2d 427, 430-31 (2011). When an appellate court is making its own findings of fact, it has öthe duty to assess the credibility of the witnesses and the weight to be given to their testimony, using the same tests as would be employed by any fact-finder in a judicial or quasi-judicial proceeding.ö *Morales-Rodriguez*, 205 N.C. App. at 715, 698 S.E.2d at 94.

Other jurisdictional facts include (1) whether the out-of-state jurisdiction provision in N.C. Gen. Stat. § 97-36 is applicable, *Burley v. U.S. Foods, Inc.*, __ N.C. __, 776 S.E.2d 832, 834 (2015); (2) whether a claim has been filed within two years under N.C. Gen. Stat. § 97-24, *Erickson v. Siegler*, 195 N.C. App. 513, 520, 672 S.E.2d 772, 777 (2009); and (3) whether an employer had the required number of employees to be subject to the Act, *Grouse v. DRB Baseball Mgmt., Inc.*, 121 N.C. App. 376, 378, 465 S.E.2d 568, 570 (1996).

III. Review of Miscellaneous Issues.

Many secondary decisions by the Industrial Commission are reviewed for abuse of discretion. These issues are typically procedural, where a trial court would similarly be reviewed for abuse of discretion. The courts have described the standard as follows:

The abuse of discretion standard of review is applied to those decisions which necessarily require the exercise of judgment. The test for abuse of discretion is whether a decision öis manifestly unsupported by reason,ö or öso arbitrary that it could not have been the result of a reasoned decision.ö Because the reviewing court does not in the first instance make the judgment, the purpose of the reviewing court is not to substitute its judgment in place of the decision maker. Rather, the reviewing court sits only to insure that the decision could, in light of the factual context in which it is made, be the product of reason.

Burnham v. McGee Bros. Co., 221 N.C. App. 341, 346-47, 727 S.E.2d 724, 728 (2012) (quoting *Little v. Penn Ventilator Co.*, 317 N.C. 206, 218, 345 S.E.2d 204, 212 (1986)). Below are examples of the use of the standard.

Commission decisions about whether to award attorneys' fees and the amount awarded are reviewed for abuse of discretion. *Cox v. City of Winston-Salem*, 171 N.C. App. 112, 119, 613 S.E.2d 746, 750 (2005) (reviewing request made under N.C. Gen. Stat. § 97-88); *Chavis v. Thetford Prop. Mgmt., Inc.*, 155 N.C. App. 769, 771, 573 S.E.2d 920, 921 (2003) (reviewing request made under N.C. Gen. Stat. § 97-88.1). Note, however, that under section 97-88.1, the initial question of whether the defendants had reasonable grounds to defend a case is reviewed *de novo*. *Meares v. Dana Corp.*, 193 N.C. App. 86, 93, 666 S.E.2d 819, 825 (2008).

Decisions concerning the Commission's procedures are reviewed for abuse of discretion. See *Hogan v. Cone Mills Corp.*, 94 N.C. App. 640, 647, 381 S.E.2d 151, 154 (1989) (applying abuse of discretion standard to review of Commission's determination on motion for relief from prior judgment, which is analogous to a trial court's Rule 60(b) determination), *rev'd on other grounds*, 326 N.C. 476, 390 S.E.2d 136 (1990); *Benfield v. Troutman*, 17 N.C. App. 572, 574, 195 S.E.2d 75, 76 (1973) (reviewing decision on motion for further hearing to present rebuttal evidence for abuse of discretion); *Matthews v. Charlotte-Mecklenburg Hosp. Auth.*, 132 N.C. App. 11, 16-17, 510 S.E.2d 388, 392-93 (1999) (reviewing choice of sanctions for violation of Commission rules for abuse of discretion, though mindful of policy against dismissal as a sanction); *Porter v. Fieldcrest Cannon, Inc.*, 133 N.C. App. 23, 26, 514 S.E.2d 517, 520 (1999) (reviewing determination of counsel's motion to withdraw for abuse of discretion).

Decisions concerning treating physicians or independent medical examinations are reviewed for abuse of discretion. *Mayfield v. Hannifin*, 174 N.C. App. 386, 401, 621 S.E.2d 243,

254 (2005) (‘‘The Commission’s decision to approve a doctor as an employee’s treating physician is reviewed for an abuse of discretion.’’); *Goodman v. Linn-Corriher Corp.*, 53 N.C. App. 612, 614, 281 S.E.2d 458, 459 (1981) (reviewing grant or denial of employer’s request that employee submit to independent physical examination for abuse of discretion).

Finally, Commission decisions about certain discretionary components of benefits are reviewed for abuse of discretion. *Aderholt v. A.M. Castle Co.*, 137 N.C. App. 718, 723, 529 S.E.2d 474, 478 (2000) (reviewing the amount of award for lost body part under N.C. Gen. Stat. § 97-31(24) for abuse of discretion); *Loch v. Entm’t Partners Employer*, 148 N.C. App. 106, 112-13, 557 S.E.2d 182, 186-87 (2001) (reviewing decision whether to grant a credit under N.C. Gen. Stat. § 97-42 for abuse of discretion).