



ALERT

MISREPRESENTATION IN JOB APPLICATION NO LONGER A DEFENSE IN NORTH CAROLINA

On May 1, 2009, the North Carolina Supreme Court reversed the decision in *Estate of Freeman v. J.L. Rothrock*. Last March, the Court of Appeals ruled that an employee's knowing misrepresentation of his medical condition on an employment application voided the employment contract and barred the employee from workers' compensation benefits.

The Court of Appeals decided the case using a three-pronged test. An injured worker was not entitled to benefits as a result of a false statement at the time of hiring when the employer proved that:

1. the employee knowingly and willfully made a false representation as to his or her physical condition;
2. the employer relied on the false representation and this reliance was a substantial factor in the hiring; and
3. there was a causal connection between the false representation and the injury.

On Friday, the Supreme Court reversed the earlier decision and held that there is no "misrepresentation" defense to a workers' compensation claim. The Supreme Court reasoned that adoption of the misrepresentation defense was inappropriate judicial legislation since the defense was not specifically listed in the Act. The Court also noted that it previously had rejected the misrepresentation defense in an earlier unpublished opinion. Please view the link below to see the decision of the Supreme Court:

<http://www.aoc.state.nc.us/www/public/sc/opinions/2009/163-08-1.htm>