

NC Workers' Compensation Update: Appeals' First Appellate Decision

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Update Regarding North Carolina Court of Appeals' First Appellate Decision on Extended Benefits Beyond 500 Weeks

As stated in MGC's last North Carolina workers' compensation update [here](#), on March 21, 2023, the North Carolina Court of Appeals entered an opinion in *Sturdivant v. NC Department of Public Safety* (COA22-421). *Sturdivant* was the first appellate case interpreting N.C.G.S. 97-29(c), which states that an employee can be entitled to temporary total disability benefits after 500 weeks if 425 weeks have passed since the date of first disability and the employee proves by a preponderance of the evidence that the employee has sustained a "total loss of wage earning capacity." Specifically, *Sturdivant* was the first appellate case interpreting the phrase "total loss of wage earning capacity." While the defendants in the case argued that the standard for establishing a "total loss of wage earning capacity" was higher than the standard for establishing "total disability" prior to 500 weeks, the Court disagreed. The Court found that the phrases "total loss of wage-earning capacity" and "total disability" were synonymous, meaning that the standard for receiving temporary total disability benefits prior to 500 weeks and the standard for receiving temporary total disability benefits after 500 weeks were the same. Practically speaking, the Court's decision appeared to significantly soften the 500 week cap.

Since MGC's last update, however, the Court of Appeals has withdrawn their decision in *Sturdivant*. While it is unclear what the Court's withdrawal of the decision means, upon inquiry MGC has been advised by the Court that the case has returned to the original panel of three judges for further consideration and another decision will be issued in the future. The timeframe for this subsequent decision is unclear, though.

MGC will provide additional updates as this case progresses. In the meantime, should have you any questions or concerns, please do not hesitate to contact one of our North Carolina worker's compensation attorneys [here](#).

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