

North Carolina Workers' Compensation Update

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NC Court of Appeals Interprets "50-Mile Radius" as a Requirement for Post-MMI Suitable Employment

Falin v. The Roberts Company Field Services, Inc.

At the time Plaintiff suffered a compensable injury by accident, he worked as an iron worker for Defendant-Employer on a job site that was over 400 miles from his residence. Defendants accepted liability. After reaching maximum medical improvement, Defendants offered Plaintiff a job at a project site located 338 miles from Plaintiff's residence. Plaintiff rejected the position. Defendants filed a Form 24 Application to Terminate or Suspend Payment of Compensation based on an unjustified refusal of suitable employment. Plaintiff filed a response arguing that the job offered to him was not within 50 miles of his residence and therefore was not suitable employment under N.C. Gen. Stat. § 97-2(22). The issue went to the Full Commission which concluded that the job offered to Plaintiff was not suitable employment because it was outside a 50-mile radius from Plaintiff's residence.

Defendants appealed the Full Commission's decision, arguing that a plain reading of N.C. Gen. Stat. § 97-2(22) as well as the legislative intent behind the statute both show that the provision that "suitable employment" must be within a 50-mile radius of a plaintiff's residence is only one of several factors to be weighed in the suitable employment analysis. The Court of Appeals affirmed the Full Commission's decision. The Court analyzed the grammatical construction of N.C. Gen. Stat. § 97-2(22), considered the legislative intent and ultimately concluded that the 50-mile radius provision was meant to be a requirement for suitable employment rather than merely a factor to be considered. Therefore, even though Plaintiff's pre-injury job was over 400 miles from his residence, Plaintiff's refusal of the offered employment that was 338 miles from his residence was justified.

This case is significant because it mandates the application of the 50-mile radius referenced in the definition of suitable employment found in N.C. Gen. Stat. § 97-2(22). Employment offered to the employee, after reaching MMI, must be within a 50-mile radius of the employee's residence in order for the position to be deemed suitable, regardless of the distance between Plaintiff's pre-injury employment and his residence.

For questions, please contact one of MGC's [workers' compensation attorneys](#).

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