

Preventing Double Recovery For Multiple Injuries

April 27, 2015

Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

For claimants who have multiple workers' compensation claims, the *North Carolina Workers' Compensation Act* prevents concurrent receipt of disability benefits. North Carolina Gen. Stat. § 97-34 prevents double recovery where a claimant is disabled by two injuries in the same employment.

N.C. Gen. Stat. § 97-34 provides that if a claimant is entitled to compensation for one injury while he is still receiving or entitled to receive compensation for a previous injury in the same employment, the claimant is not entitled to compensation for both injuries at the same time, unless the later injury results in permanent partial disability for which compensation is specified in N.C. Gen. Stat. § 97-31. Section 97-34 also provides that the claimant is entitled to compensation for the injury that will cover the longest period and the largest amount payable under the *Workers' Compensation Act*.

For example, assume that a claimant sustains a compensable partial thickness rotator cuff tear in his right shoulder in 2010 while working for his employer. His average weekly wage at the time of the injury is \$600.00 with a corresponding compensation rate of \$400.00. After an arthroscopic debridement, the claimant returns to work for the same employer. In 2012, the claimant sustains a compensable injury to his lower back. At the time of the second injury, the claimant's average weekly wage is \$540.00 with a corresponding compensation rate of \$360.00. The claimant requires back fusion surgery and is written out of work for an extended period of time, thus he is entitled to temporary total disability benefits. While the claimant is out of work and disabled for his lower back injury, his right rotator cuff fully tears and the doctor opines that it is a direct and natural result of the 2010 work injury. The claimant has a second shoulder surgery and is completely written out of work. Accordingly, the claimant is disabled for both his back and shoulder, two separate injuries for the same employer. N.C. Gen. Stat. § 97-34 prevents the claimant from receiving double disability benefits. Under this scenario, the claimant is entitled to receive disability benefits for the injury that covers the longest period and the largest amount payable. Therefore, the claimant could receive disability benefits based on his compensation rate from the 2010 injury because it would result in the largest amount payable.

Prior to determining whether the claimant is entitled to elect disability benefits based on the higher of two compensation rates, the North Carolina Industrial Commission must make specific findings of fact regarding the claimant's dates of disability and each injury's impact on the claimant's disability. For example, in *Helfrich v. Coca-Cola Bottling Co. Consol.*, 741 S.E.2d 408, 2013 N.C. App. LEXIS 221 (2013), the plaintiff sustained a series of compensable injuries while employed with the same employer-defendant. The main issue for determination was which compensation rate applied to the award of disability benefits. Unfortunately, the Industrial Commission did not make specific findings of facts to identify whether the plaintiff was *simultaneously disabled* from numerous injuries. Without these specific findings, the Court held that the Industrial Commission could not properly implicate N.C. Gen. Stat. § 97-34 and remanded the case for additional findings. The takeaway from *Helfrich* is that there must be a determination of the dates of the claimant's disability, as well as each injury's impact on disability. If the claimant is not simultaneously disabled by two separate injuries, § 97-34 is not invoked, and the claimant is not entitled to elect the compensation that results in the longest period or highest amount payable.

The purpose of N.C. Gen. Stat. § 97-34 is to prevent double recovery for overlapping periods of disability while also ensuring that the claimant is entitled to receive the more beneficial remedy for two compensable injuries. The premise of allowing the claimant to receive the more beneficial remedy is consistent throughout the *Workers' Compensation Act*, similar to the claimant's right to receive the more beneficial remedy between ongoing temporary total disability benefits and permanent partial disability benefits once he has reached maximum medical improvement. *Collins v. Speedway Motor Sports Corp.*, 165 N.C. App. 113, 598 S.E.2d 185 (2004). In summary, the Industrial Commission will award the claimant the more beneficial of two remedies to which he is entitled, but the Industrial Commission will not allow a double recovery of benefits.

This article originally appeared on 11/4/14 on the Workers' Compensation Institute's [website](#), and is republished here with permission.

This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation.

ABOUT THE AUTHOR

[David Galbavy](#) is an attorney with McAngus Goudelock & Courie. MGC is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. From ten regional offices, we serve clients across the Southeast. Mr. Galbavy may be reached at 704.405.4626 or by [email](#).