

Willful Misrepresentation Defense in North Carolina Workers' Compensation: When Employees Make False Representations in the Hiring Process

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In defending a workers' compensation claim, employers may discover that the injured employee had not been forthcoming about previous injuries or work restrictions. In these situations, employers often take the position that the employee should not be entitled to compensation due to failure to disclose this information. Fortunately, the North Carolina Workers' Compensation Act allows employers to assert a defense against the employee's claim in cases where the employee was dishonest about previous injuries, restrictions or other physical conditions. Pursuant to N.C. Gen. Stat. § 97-12.1, this is called a willful misrepresentation defense.

While the statute provides a useful tool in defending claims against dishonest employees, the statute cannot be applied as broadly as some employers might hope. N.C. Gen. Stat. § 97-12.1 sets forth several requirements that must be satisfied before the defense can be successfully asserted. Parts of the statute use the unnecessarily complex legal language that causes heads to ache, but the requirements can actually be understood quite easily when approached one piece at a time.

The first part of the statute addresses the point in time when the employee makes the false representation. This element is best viewed as a preliminary inquiry that must be answered before addressing the defense's other requirements. In order for the defense to be applicable, an employee must provide the false information at one of three points in the hiring process. Most simply, the false statement can occur at the time of hire or in the course of entering into employment. Because most employees are hired through a standard interview process, this first method will account for the majority of situations. The second method can apply when a conditional offer of employment is involved. The false information may be provided at the time the employee is told of the removal of conditions from a conditional offer of employment. Finally, if the job requires a post-offer medical examination, the inaccurate statement can be made during this encounter.

If the employee provided the false representation during one of these three moments, then one is ready to analyze the remaining elements. First, the statute requires that the employee knowingly and willfully made a false representation regarding the his or her physical condition. This means that the defense cannot be raised when an employee simply withholds information about his or her physical condition. The statute does not place the employee under any legal obligation to voluntarily disclose the relevant information. Instead, the statute prohibits the employee from making a statement about his or her physical condition that the employee knows to be untrue.

Next, one or more of the employee's false representations must have been relied upon by the employer and have been a substantial factor in the hiring decision. For example, an employer that is hiring for a stockroom position will likely be able to prove that an employee's false representation about a back injury was a substantial factor in the decision to hire the employee. It is reasonable for the employer to consider the physical ability of the employee since the position requires persistent lifting and moving of heavy items. On the other hand, a stockroom applicant's false statement about his mild nearsightedness will probably not be considered a substantial factor in the hiring decision for this particular position.

Finally, there must be a causal connection between the false representation made by the employee and the injury. A causal connection can be thought of as a connection between the employee's behavior and actions and the consequences of such behavior or actions. Returning to the example of the stockroom employee, an injury to the employee's back while lifting a heavy box will usually be causally connected to the false representation. There is a clear connection between the false representation and the resulting injury. In contrast, an injury to the stockroom employee's foot when a coworker drops a heavy object on it will not be casually connected. In this case, the false representation about the back injury had no relation to the foot injury.

Although the statute requires that several elements be satisfied before an employer can successfully assert this defense, employers can make a few easy adjustments to their hiring practices that will put them in a better position to utilize this defense. Many employers believe that the statute should place an obligation on the employee to report a relevant physical condition. However, employers will be in a stronger position to assert this defense if they include direct questions related to physical conditions as part of the interview process.

For example, the stockroom employer can ask every candidate whether they have any work restrictions, prior injuries, or other physical conditions that would in any way affect their ability to perform the job. To make the question more effective, the employer could hand the employee a list of the job duties and physical demands to review before answering the question. By employing this tactic, the employer positions itself to make the strongest argument that they have satisfied all of the required elements for the application of a willful misrepresentation defense.

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