

Performance News

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Employer Defense for WC Claim

Recent North Carolina legislation offers possible relief

The Court of Appeals made a recent ruling that could provide a defense to employers when an employee provides inaccurate information on their employment application.

The case is Freeman v. J. L. Rothrock, No. COA07-269 and was filed March 4, 2008. In this case, the Plaintiff was hired as a truck driver and, unbeknownst to his employer, had a significant history of low back problems which included two (2) prior workers' compensation injuries to his back. In 1996, Plaintiff had received a disability rating to his back and his physician imposed permanent work restrictions of light to medium duty work. These restrictions precluded him from returning to his prior job as a truck driver and the Plaintiff was advised by his physician to seek another type of employment.

Several years later he applied for a position as a truck driver with Rothrock. As part of his employment application he completed a medical history questionnaire and denied ever having any prior back injuries or workers' compensation claims. The Plaintiff went even further than that and provided a verification that he was capable of performing the job duties, which were described as "strenuous" knowing this statement to be false. Furthermore, he underwent a DOT physical and failed to disclose his prior condition. The Plaintiff was hired by Rothrock as a truck driver and two (2) years later, suffered a work-related injury to his lower back.

Rothrock maintained the position that had they known about the Plaintiff's history of back problems and had they known he was under permanent work restrictions, he would not have been hired as a truck driver. The Deputy Commissioner and Full Commission rejected this argument and awarded benefits to Plaintiff. The Defendants appealed the issue to the Court of Appeals who reversed the Full Commission and denied Plaintiff's claim for benefits based on Plaintiff's misrepresentation. Specifically, the Court of Appeals adopted the three part "Larson's Test", which provides the employer must establish:

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

While this has the potential of being a great case for employers, there was a dissent to the opinion filed by the Court of Appeals. I would also caution you by saying that, in my opinion, this case was very fact specific. It does not stand for the proposition that an Employer can deny a workers' compensation claim on the basis that an Employee lied on their employment application. In this particular case, the Employee was not able to perform the essential functions of the very job that he was applying for and knew that his restrictions precluded him from working as a truck driver. Since there was a dissenting opinion and since this is a case of first impression, this case will likely be appealed to the Supreme Court.

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