

Contemplating Lifting the 500 Week Cap (N.C.G.S. § 97-29c):

How Did We Get Here?

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N.C.G.S. § 97-29(b)

(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been deemed compensable following a hearing pursuant to G.S. 97-84, the employee qualifies for temporary total disability subject to the limitations noted herein. ***The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.***

N.C.G.S. § 97-29(c)

(c) An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section **only if:**

- (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, **425 weeks have passed since the date of first disability**

AND

- (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, **the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity.**

N.C.G.S. § 97-29(c)

If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court determines otherwise.

N.C.G.S. § 97-29(c)

Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500-week limitation on temporary total disability described in subsection (b) of this section, and, on such review, may make an award ending or continuing extended compensation. ***When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity.***

N.C.G.S. § 97-29(c)

When an employee is receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in section 216(l) of the Social Security Act, the employer may reduce the extended compensation by one hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to section 215(i) of the Social Security Act.

N.C.G.S. § 97-29(d)

(d) An injured employee may qualify for permanent total disability only if the employee has one or more of the following physical or mental limitations resulting from the injury:

- (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, as provided by G.S. 97-31(17).
- (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- (3) Severe brain or closed head injury as evidenced by severe and permanent:
 - a. Sensory or motor disturbances;
 - b. Communication disturbances;
 - c. Complex integrated disturbances of cerebral function; or
 - d. Neurological disorders.
- (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of the total body surface.

N.C.G.S. § 97-29(d)

An employee who qualifies for permanent total disability pursuant to this subsection shall be entitled to compensation, including medical compensation, during the lifetime of the injured employee, unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however, the termination or suspension of compensation because the employee is capable of returning to suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to medical compensation. An employee who qualifies for permanent total disability under subdivision (1) of this subsection is entitled to lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity. In no other case shall an employee be eligible for lifetime compensation for permanent total disability.

Thank you!

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