

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**HOUSE BILL 26
RATIFIED BILL**

AN ACT TO CLARIFY THAT AN INJURY NOT IDENTIFIED IN AN AWARD ARISING OUT OF G.S. 97-18(B) OR G.S. 97-18(D) IS NOT PRESUMED CAUSALLY RELATED AND TO AMEND THE WORKERS' COMPENSATION ACT REGARDING APPROVAL OF DISPUTED LEGAL FEES BY THE INDUSTRIAL COMMISSION.

Whereas, in 2011, the Workers' Compensation Act was amended by S.L. 2011-287; and

Whereas, the North Carolina Supreme Court issued a decision in *Wilkes v. City of Greenville* (No. 368PA15) on June 9, 2017; and

Whereas, prior to the Supreme Court's decision in *Wilkes*, employees were not required to prove entitlement to additional medical treatment for the injuries determined to be compensable by the Commission; and

Whereas, prior to the Supreme Court's decision in *Wilkes*, employees could seek medical treatment for future symptoms allegedly related to the original compensable injury; and

Whereas, the *Wilkes* decision held that once an employer issues direct payment to an employee pursuant to G.S. 97-82(b), the employee is entitled to a presumption that additional medical treatment is causally related to the employee's compensable injury unless the employer rebuts this presumption with evidence that the condition or treatment is not causally related to the compensable injury; and

Whereas, an employee bears the burden of proving that the employee's future symptoms or conditions that the employee alleges are related to the compensable injury but that were not enumerated on a Form 60 or Form 63 pursuant to G.S. 97-18(b) or G.S. 97-18(d), respectively, are causally related to the compensable injury; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 97-82(b) reads as rewritten:

"(b) If approved by the Commission, a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury as reflected on a form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d) for which payment was made. An award of the Commission arising out of G.S. 97-18(b) or G.S. 97-18(d) shall not create a presumption that medical treatment for an injury or condition not identified in the form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d) is causally related to the compensable injury. An employee may request a hearing pursuant to G.S. 97-84 to prove that an injury or condition is causally related to the compensable injury. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article."



SECTION 1.(b) In enacting subsection (a) of this section, it is the intent of the General Assembly to clarify, in response to *Wilkes v. City of Greenville*, that an injury not identified in an award arising out of G.S. 97-18(b) or G.S. 97-18(d) is not presumed to be causally related to the compensable injury to reflect the intent of the General Assembly when it enacted S.L. 2011-287.

SECTION 1.(c) This section is effective when it becomes law and applies to claims accrued or pending prior to, on, or after that date.

SECTION 2. G.S. 97-90(f) reads as rewritten:

"(f) ~~The~~ If a dispute arises between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section, the Commission shall hear and determine any dispute between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section any dispute after the Commission has approved the settlement agreement. The Commission shall give notice to each of the employee's current and past attorneys of record of the total amount of the approved fee prior to determining how the fee shall be divided between those attorneys. An attorney who is ~~a~~ an interested party to an action under this subsection shall have the same rights of appeal as outlined in subsection (c) of this section."

SECTION 3. Except as otherwise provided, this act is effective when it becomes law and applies to claims pending on or after that date.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____ .m. this _____ day of _____, 2017