



News & Updates

PARSONS PRESUMPTION STILL APPLICABLE TO SAME BODY PART

The North Carolina Court of Appeals has handed down a ruling that clarifies and potentially expands the “Parsons presumption,” a North Carolina precedent that posits a relationship between an original work-related injury and additional treatments required. This new ruling, in the case of *Bell v. Goodyear*, establishes that when a court accepts an injured body part as compensable, subsequent injury to the same body part is subject to the *Parsons* presumption, even if the exact location of the subsequent injury is different from the original injury.

In *Bell v. Goodyear*, the plaintiff suffered a compensable right shoulder injury in 2007, which a physician diagnosed as a superior labral tear from anterior to posterior (a SLAP tear or lesion). After a SLAP lesion repair, the plaintiff reached Maximum Medical Improvement in March 2012. She returned to work with Goodyear.

In August 2013, the plaintiff felt a pop in her right shoulder while lifting. The plaintiff received a diagnosis of biceps tendinitis. Goodyear denied medical treatment and further disability benefits, arguing that the plaintiff’s current shoulder condition was unrelated to the 2007 work accident. Goodyear further argued that the *Parsons* presumption should not apply, because the compensable 2007 injury involved the rotator cuff and superior labrum, not the biceps tendon.

The Court of Appeals rejected Goodyear’s argument, noting that the Form 60 (in North Carolina, the Employer’s Admission of Employee’s Right to Compensation) admitted the right shoulder as compensable. The court held that the *Parsons* presumption applied, relying on the fact that the biceps tendon is a part of the right shoulder.

The court noted that the plaintiff’s physicians were equivocal in their opinions linking the 2007 injury to the biceps injury of 2013, but held that it was Goodyear’s burden to show that the new injury was *not* related to the 2007 injury.

A decision on the validity and scope of the *Parsons* presumption is still pending before the North Carolina Supreme Court. However, every decision interpreting *Parsons* thus far has held that whatever injury is listed on the Form 60 is the injury to which the *Parsons* presumption applies. In *Bell v. Goodyear*, the defendants listed the right shoulder as the compensable body part, and the court rejected their retroactive attempt to limit the admission to just the labrum and rotator cuff. While specificity is not always possible, carriers should try to limit the scope of any admission as much as possible.

Bell also addressed contradictions between the Industrial Commission rules and the North Carolina general statutes with respect to reinstatement of temporary total disability (TTD) benefits. The Industrial Commission rules state that carriers are not required to reinstate TTD benefits after a failed return to work trial unless the claimant files a Form 28U (the Employee’s Request that Compensation be Reinstated After Unsuccessful Trial Return to Work). The court noted that as soon as a carrier has notice of a failed return to work, either through a Form 28U or actual knowledge, they are required to reinstate TTD.

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