

The statute that governs occupational death claims in North Carolina, Section 97-38, sets a time limit for allowing such claims to proceed. An injured worker's dependents are eligible for death benefits if her death occurs within (a) 6 years of the injury or occupational disease or (b) 2 years of 'the final determination of disability,' whichever occurs later.

The dispute in the *Pait* cases focuses on the latter, 2-year time limit. In rare cases when it's clear that an injured worker will never return to work, an employer may seek to have the worker declared permanently and totally disabled. Such a declaration would, of course, be a 'final determination of disability,' which starts the 2-year time limit under the death claim statute. Essentially, the employer wants to save money by having the time limit lapse on any potential death claim.

Obviously, the injured worker is motivated to contest such an effort by the employer. Even without being declared permanently disabled, an injured worker can receive benefits until her death. (Admittedly, there is now a 500-week limit under the [2011 amendments](#) for casing arising after June 23, 2011.) So a declaration of permanent and total disability does little more than potentially rob the worker's loved ones of death benefits.

In *Pait*, the injured worker raised 3 arguments for why the employer could not have her declared permanently disabled. First, the worker argued that the employer had no 'standing' to seek the declaration. It is the worker's right rather than the employer's, she argued, to choose her best remedy. The Court rejected this argument, noting that once an employee reaches 'maximum medical improvement,' either party can seek a determination of her permanent loss of earning capacity.

Next, the employee argued that the dispute was not 'ripe' for determination. When the worker was originally injured, she entered an agreement with her employer for the payment of benefits, and there was no dispute that those benefits were being paid. In other words, she argued that there was no actual dispute. The Court disagreed, again noting that the employer could seek a determination of the worker's permanent disability once her injuries had stabilized and become permanent.

Finally, the employee noted that the employer had to include in the claim all of the people who would potentially receive death benefits if she died from her occupational lung disease. She argued that the employer could not try to take away their rights to receive death benefits without giving potential beneficiaries an opportunity to fight those efforts. The Court rejected this argument as well, stating that a death benefits claim is a separate and distinct claim, which arises only after the injured worker's death. Because the potential beneficiaries did not have any rights until the injured worker passed away, the employer had no obligation to include them in the claim.

So in *Pait*, the Court of Appeals answered 'yes,' an employer can seek to have its worker declared permanently and totally disabled, even if only for the purpose of starting the time limit to bar a death claim. As a result, we will see more such efforts by employers, especially in occupational lung disease cases, and fewer death benefit claims when injured workers die from their occupational injuries and diseases.