N.C.G.S. 97-22 requires an injured employee to provide the employer 'written notice of the accident' within 30 days (emphasis added). In Gregory v. W.A. Brown & Sons (*Gregory II*), the Court of Appeals has concluded that an employer who had actual notice of an accident was not prejudiced by the employee's failure to give written notice and, therefore, could not rely on 97-22 to deny the claim for benefits.

By way of background, in 2008, the North Carolina Supreme Court articulated the sensible rule that when the employer has actual notice of the accident, written notice is not required. See Richardson v. Maxim Healthcare/Allegis Group. This rule makes perfect sense in light of the dual purpose of 97-22. First, the notice requirement enables the employer to obtain an immediate diagnosis and minimize the seriousness of the injury. Second, prompt notice allows the employer to perform an immediate and thorough investigation. When the employer has actual notice of injuy, both of those purposes are served.

The clarity of the *Richardson* case was dispelled by the Supreme Court in the first Gregory v. W.A. Brown & Sons case (*Gregory I*). In *Gregory I*, the Supreme Court held that even if the employer has actual notice of the accident, the Industrial Commission must determine whether the employer was prejudiced by an employee's failure to give written notice. In other words, there could conceivably be a case in which the employer had actual, timely notice of an accident but could deny the claim on the techincal grounds that no written notice was given.

One of the Supreme Court's concerns in *Gregory I* was the fierce factual dispute over whether the employer did have actual notice. Several representatives of the employer denied that the employee ever reported a workplace injury. Although the Industrial Commission found that the employee did provide actual notice, the Supreme Court appeared to overstep its limited scope of review and cast doubt on that finding.

Fortunately, the case returned to the Court of Appeals, as *Gregory II*, for the determination of whether the employer was prejudiced by the lack of written notice. The Court of Appeals declared, '[O]ur Courts have found that where the employer is on actual notice of the employee's injury soon after it occurs, and soon enough for a thorough investigation, defendant-employer is not prejudiced by plaintiff's failure to provide timely written notice.' The Court of Appeals stayed within the proper scope of its review and confirmed that there was sufficient evidence for the Industrial Commission to find that the employer had actual notice. And because there was actual notice, the employer

was not prejudiced.

The *Gregory II* decision clears up the confusion sewn by the Supreme Court in *Gregory I*. The Industrial Commission is the fact-finder and, as such, decides whether the employer had actual notice. (So long as there is evidence in the record to support such a finding, the appellate courts cannot decide otherwise.) If the employer does have actual notice, the purpose of 97-22 is served, and the employer is not prejudiced by the lack of written notice.

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