

In a *per curiam* decision issued May 1, 2009, the Supreme Court overturned the Court of Appeals decision holding that an injured worker was barred from receiving workers' compensation benefits because he failed to disclose prior problems with his back. The Supreme Court did not issue an opinion. Rather, they adopted the dissent of Judge Wynn in the Court of Appeals case.

In a decision issued March 4, 2008, the North Carolina Court of Appeals adopted what it called the 'Larson Test.' *Freeman v. J. L. Rothrock*, – N.C. App. –, – S.E.2d – (2008). Under the Larson Test, in certain circumstances when an employee fails to disclose prior medical conditions and is later injured, the employee is not entitled to workers' compensation benefits.

In 2000, Mr. Freeman applied for work at J.L. Rothrock. On a medical history questionnaire, he failed to disclose that he had a history of low back problems and light-duty work restrictions resulting from workers' compensation claims in 1992 and 1996. For almost two years, Mr. Freeman worked a strenuous trucking job with Rothrock without any back problems. On March 11, 2002, he suffered a back injury while working at Rothrock.

Rothrock tried to terminate Mr. Freeman's benefits on the basis that his 'misrepresentations' on the questionnaire barred his right to recover benefits. The Industrial Commission rejected this argument. However, the Court of Appeals sided with Rothrock and held that Mr. Freeman was barred from receiving benefits.

In doing so, the Court adopted and applied the Larson Test. Under this test, an employee can be barred from receiving workers' compensation benefits if three elements are established: (1) The employee knowingly and willingly makes false representations about his physical condition, (2) the employer relies on these presentations, and (3) there is a causal connection between the false representations and the injury.

The majority of the Court of Appeals held that Mr. Freeman had made misrepresentations on his employment application and that J.L. Rothrock relied on them in hiring him. Because the misrepresentations related to prior back injuries, the court held that J.L. Rothrock relied on them in hiring him. Because the misrepresentations related to prior back injuries, the court held that there was a causal connection between the failure to disclose the prior injuries and the back injury at Rothrock.

Judge Wynn dissented from the majority ruling for two reasons. First, the Court of Appeals had rejected the Larson Test in at least two prior cases. The Court of Appeals is bound by its own precedent and cannot simply 'overrule' one of its own decisions. Second, Judge Wynn held that there is no statute in the Workers' Compensation Act that allows adoption and application of the Larson Test. Thus, the majority's use of the test amounted to 'judicial legislation.'

## What does this mean for the injured worker?

First, despite this result, do not make misrepresentations on your employment applications. As Elihu Root once advised a client, 'The law lets you do it, but don't. It's a rotten thing to do.' On the other hand, this case can be interpreted as encouraging injured workers to return to the workforce. So long as they can safely perform the essential functions of a job, workers should not be punished for testing the boundaries of restrictions from previous injuries.