

JAMES MYLES, Employee, Plaintiff v. LUCAS AND McCOWAN MASONRY,
Employer THE TRAVELERS, Carrier, Defendants

NO. COA06-1266

Filed: 5 June 2007

**Workers' Compensation—constitutional claim from Industrial Commission—not certified by
Commission—no petition for cert—dismissed**

The Court of Appeals did not have jurisdiction and dismissed an appeal from the denial of workers' compensation benefits for an inmate where plaintiff presented a constitutional question but there was no indication that the Industrial Commission certified the question or that a petition for certiorari was filed.

Appeal by plaintiff from an opinion and award entered 29 June 2006 by the North Carolina Industrial Commission. Heard in the Court of Appeals 28 March 2007.

Scudder & Hedrick, by Alice Tejada, for plaintiff-appellant.

Hedrick, Eatman, Garnder & Kincheloe, L.L.P., by Thomas M. Morrow and Susan J. Vanderweert, for defendant-appellees.

Per Curiam

James Myles ("plaintiff") appeals the order of the North Carolina Industrial Commission ("Commission"), which denied plaintiff's request for workers' compensation benefits while he was incarcerated but before he was convicted. Because we do not have jurisdiction to hear this case, we dismiss plaintiff's appeal.

Plaintiff presented one issue for our review: Whether the equal protection clauses of the United States and North Carolina Constitutions allow the Commission to deny disability benefits during an employee's pre-conviction incarceration. Where a party appeals a constitutional issue from the Commission and fails to file a petition for *certiorari* or fails to have the question

certified by the Commission, this Court is without jurisdiction. *Carolinas Medical Center v. Employers And Carriers Listed in Exhibit A*, 172 N.C. App. 549, 553, 616 S.E.2d 588, 591 (2005). In the instant case, there is no evidence in the record that the Commission has certified the question nor is there any evidence that a petition for *certiorari* was filed. Accordingly, we are without jurisdiction to hear this case. For the foregoing reasons, plaintiff's appeal is dismissed.

Dismissed.

Panel consisting of: Judges Hunter, Tyson, and Jackson