

#### **11 NCAC 23A .0404A TRIAL RETURN TO WORK**

(a) Except as provided in Paragraph (g) of this Rule, when compensation for total disability being paid pursuant to G.S. 97-29 is terminated because the employee has returned to work for the same or a different employer, the termination is subject to the provisions of G.S. 97-32.1 (trial return to work). When compensation is terminated under these circumstances, the employer, carrier, or administrator shall, within 16 days of the termination of compensation, file a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* with the Commission and provide a copy of it to the employee's attorney of record or the employee, if unrepresented.

(b) If during the trial return to work period, the employee must stop working due to the injury for which compensation had been paid, the employee may complete and file with the Commission a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, without regard to whether the employer, carrier or administrator has filed a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* as required by Paragraph (a) of this Rule, and provide a copy of the completed form to the employer and carrier or administrator. A Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* contains a section that shall be completed by the physician who imposed the restrictions or one of the employee's authorized treating physicians, certifying that the employee's injury for which compensation had been paid prevents the employee from continuing the trial return to work. If the employee returned to work with an employer other than the employer at the time of injury, the employee may complete the "Employee's Release of Employment Information" section of a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*. An employee's failure to provide a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* does not preclude a subsequent finding by the Commission that the trial return to work was unsuccessful.

(c) Upon receipt of a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, the employer, carrier, or administrator shall resume payment of compensation for total disability. If the employee fails to provide the required certification of an authorized treating physician as specified in Paragraph (b) of this Rule, or if the employee fails to execute the "Employees Release and Request" section of a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, if required pursuant to Paragraph (b) of this Rule, the employer, carrier, or administrator is not required to resume payment of compensation. Instead, the employer, carrier, or administrator shall return a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* to the employee's attorney of or the employee, if unrepresented, along with a statement explaining the reason the Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* is being returned and the reason compensation is not being reinstated.

(d) The reinstated compensation shall be due and payable and subject to the provisions of G.S. 97-18(g) on the date and for the period commencing on the date the employer, carrier, or administrator receives a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* certifying an unsuccessful return to work. Such resumption of compensation does not preclude the employee's right to seek, nor the employer's, carrier's, or administrator's right to contest, the payment of compensation for the period prior or subsequent to the reinstatement. If it is thereafter determined by the Commission that any temporary total or temporary partial compensation, including the reinstated compensation, was not due and payable, a credit shall be given against any other compensation determined to be owed.

(e) When the employer, carrier, or administrator has received a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* and contests the employee's right to reinstatement of total disability compensation, the employer, carrier, or administrator may suspend or terminate compensation only as provided in G.S. 97-18.1, G.S. 97-83 or G.S. 97-84.

(f) Upon resumption of payment of compensation for total disability, the employer, carrier, or administrator shall complete and file a Form 62 *Notice of Reinstatement or Modification of Compensation* or such other forms as may be required by the Workers' Compensation Act or by Commission rule. A copy of the Form 62 *Notice of Reinstatement or Modification of Compensation* shall be sent to the employee's attorney of record or the employee, if unrepresented.

(g) The trial return to work provisions do not apply to the following:

- (1) cases in which the employee is not absent from work for more than one day or in which medical expenses are less than two thousand dollars (\$2,000);
- (2) cases in which the employee has missed fewer than eight days from work;
- (3) cases in which the employee has been released to return to work by an authorized treating physician as specified in Paragraph (b) of this Rule without restriction or limitation except that if the physician, within 45 days of the employee's return to work date, determines that the employee

is not able to perform the job duties assigned, then the employer, carrier, or administrator shall resume benefits. If within the same time period, the physician determines that the employee may work only with restrictions, then the employee is entitled to a resumption of benefits commencing as of the date of the report, unless the employer is able to offer employment consistent with the restrictions, in which case a trial return to work period shall be deemed to have commenced at the time of the employee's initial return to work;

- (4) cases in which the employee has accepted or agreed to accept compensation for permanent partial disability pursuant to G.S. 97-31, unless the trial return to work follows reinstatement of compensation for total disability under G.S. 97-29; and
  - (5) claims pending on or filed after 1 January 1995, when the employer, carrier, or administrator contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder.
- (h) This Rule applies to any employee who leaves work on or after February 15, 1995 due to a compensable injury.

*History Note:* Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a);  
Eff. February 15, 1995;  
Amended Eff. November 1, 2014; August 1, 2006; June 1, 2000;  
Recodified from 04 NCAC 10A .0404A Eff. June 1, 2018.