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NO. COA02-860

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2003

JOHN R. CORRIHER,  
Plaintiff

v.

North Carolina Industrial Commission  
I.C. File Nos. 011566 & 966550

OAKWOOD HOMES CORPORATION,  
Employer,

ACE USA, SERVICING AGENT  
Carrier,  
Defendants

Appeal by defendants from opinion and award entered 18 January 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 May 2003.

*Doran, Shelby, Pethel and Hudson, P.A., by David A. Shelby, for plaintiff-appellee.*

*Teague, Campbell, Dennis & Gorham, L.L.P., by Gregory M. Willis, for defendant-appellants.*

CALABRIA, Judge.

The plaintiff, John R. Corriher, was employed by defendant-employer Oakwood Homes Corporation (“Oakwood”) as a roofer. On 12 May 1998, plaintiff was walking across a roof carrying two bundles of shingles which together weighed approximately 150 pounds, when he slipped and fell. Plaintiff fell on his tailbone and landed on the dormer at the peak of the roof. Plaintiff reported his injury to his supervisor, but continued to work while experiencing back

discomfort. On 7 July 1998, as plaintiff lifted a bundle of shingles off a forklift, he twisted and felt a sharp pain in his lower back. He reported the incident to the company nurse who gave him a back brace.

On 8 July 1998, plaintiff sought treatment from Dr. Michael Binder, a chiropractor. Dr. Binder testified that plaintiff told him he had been suffering from numbness in his thigh for two weeks, and that on the previous day he had bent over and felt some pain in his lower back. Dr. Binder's notes indicated that the injury was due to a car accident, but he testified that his notes were in error, and that plaintiff had indicated the 12 May 1998 fall as the cause of his back pain. Dr. Binder's diagnosis was that plaintiff suffered from spondylolisthesis, and that his condition was likely aggravated by "some type of force that had occurred recently in his back," probably the fall on 12 May 1998.

Plaintiff was referred to Dr. Mark A. Lyerly, a neurosurgeon, and was examined on 15 September 1998. Dr. Lyerly confirmed the diagnosis of spondylolisthesis. Plaintiff was treated conservatively with anti-inflammatory medication. Plaintiff visited Dr. Lyerly again on 1 April 1999 complaining of worse pain. Plaintiff had an MRI performed on his back. The MRI showed disc degeneration, and plaintiff was given an epidural block and pain medication. On 27 July 1999, Dr. Lyerly restricted plaintiff from working as a roofer due to his back pain.

Plaintiff visited Dr. Lyerly again on 31 August 1999. Plaintiff mentioned to Dr. Lyerly that he had been in an accident and had been thrown over the handle bars of a four-wheel vehicle, resulting in "acutely more severe pain." However, Dr. Lyerly testified that prior to the accident, plaintiff's symptoms were already severe enough so that he could not work, and he had already discussed the possibility of the need for surgery with plaintiff. Dr. Lyerly subsequently performed surgery on plaintiff on 22 October 1999. Plaintiff had a difficult recovery, and was

unable to return to work. A second surgery was performed on 5 May 2000 in which some scar tissue was removed and screws inserted to stabilize plaintiff's spine. Dr. Lyerly testified that plaintiff's spondylolisthesis was likely an "asymptomatic congenital condition" which was turned "symptomatic" by the two incidents on 12 May and 7 July 1998. Dr. Lyerly further testified that plaintiff "at best, will [have] . . . 35 percent permanent partial impairment."

On 22 September 1999, plaintiff filed a Form 18 Notice of Accident to Employer indicating that he hurt his back while at work on 12 May 1998. Plaintiff subsequently filed an additional Form 18 notice indicating he also suffered an injury to his back while at work on 7 July 1998. Plaintiff was laid off by Oakwood on 1 October 1999 and has not returned to work. Plaintiff filed a Form 33 request that his claim be assigned for hearing with the Industrial Commission. On 31 October 2000, Deputy Commissioner Wanda Blanche Taylor entered an opinion and award concluding that plaintiff had suffered a compensable injury by accident on 12 May 1998, and a compensable aggravation of that injury on 7 July 1998, and was entitled to temporary total disability compensation. On 18 January 2002, the Full Commission entered an opinion and award affirming the Deputy Commissioner's decision. Defendants appeal.

Defendants argue that the Commission failed to make sufficient findings of fact on critical issues, and therefore the Court cannot review whether the Commission properly considered all the evidence before it. Specifically, defendants argue that: (1) there were intervening incidents, namely an accident on a four-wheel vehicle and a fight in which plaintiff was stabbed, which were more likely to be the cause of plaintiff's back condition; (2) plaintiff gave contradictory histories to his doctor; and (3) plaintiff gave conflicting evidence as to whether he had ever reported the incident to his supervisor. Defendants assert that the

Commission made no findings of fact concerning these issues, and thus the Commission failed to show it considered all of the evidence.

After careful review of the record, briefs and contentions of the parties, we affirm. The findings of fact made by the Industrial Commission are conclusive on appeal if supported by any competent evidence. *Watkins v. City of Asheville*, 99 N.C. App. 302, 303, 392 S.E.2d 754, 756 (1990). The Court's review is limited to determining "whether there was competent evidence before the Commission to support its findings and . . . whether such findings support its legal conclusions." *McLean v. Roadway Express*, 307 N.C. 99, 102, 296 S.E.2d 456, 458 (1982).

Here, the Industrial Commission found plaintiff had injured his back on 12 May 1998 and subsequently aggravated his injury on 7 July 1998. The Commission further found that as a result of these injuries, plaintiff has been unable to work since 1 October 1999. The trial court based its findings on testimony from the plaintiff regarding his injuries on those dates, as well as the testimony of Dr. Binder and Dr. Lyerly, both of whom testified that plaintiff likely had an "asymptomatic congenital condition" which became "symptomatic" due to the trauma incurred in the accidents at work on 12 May and 7 July 1998. Thus, we conclude there was competent evidence in the record to support the findings and conclusions made by the Commission.

Furthermore, we disagree with defendants' argument that the Commission did not make sufficient findings to show it considered all of the evidence. This Court has stated that:

The Full Commission must make 'definitive findings to determine the critical issues raised by the evidence,' and in doing so must indicate in its findings that it has 'considered or weighed' all testimony with respect to the critical issues in the case[.] *It is not, however, necessary that the Full Commission make exhaustive findings as to each statement made by any given witness or make findings rejecting specific evidence that may be contrary to the evidence accepted by the Full Commission.*

*Bryant v. Weyerhaeuser Co.*, 130 N.C. App. 135, 139, 502 S.E.2d 58, 61-62 (1998) (citations omitted) (emphasis added). In the case *sub judice*, the trial court found that plaintiff's back injury pre-dated his accident on the four-wheel vehicle. Furthermore, implicit in the Commission's findings was a rejection of defendants' argument that the fight where plaintiff was stabbed in the abdomen played any role in his back injury. There was absolutely no medical evidence presented that the fight played any role in the development of the plaintiff's disabling back pain. The Commission specifically found that the plaintiff's back injury was caused or aggravated by the work accidents. Also implicit in the findings was a rejection of any concern that defendant allegedly provided an inconsistent medical history. We note that the Commission "is the sole judge of the credibility of the witnesses and the weight to be given their testimony.' Thus, the Commission may assign more weight and credibility to certain testimony than [to an]other." *Dolbow v. Holland Industrial*, 64 N.C. App. 695, 697, 308 S.E.2d 335, 336 (1983) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)). Accordingly, the opinion and award of the Industrial Commission is affirmed.

Affirmed.

Judges MARTIN and McCULLOUGH concur.

Report per Rule 30(e).