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NO. COA05-718

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

LAZONA GAIL SPEARS,
Employee/Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 013245

BETSY JOHNSON MEMORIAL HOSPITAL,
Employer,

and

NORTH CAROLINA GUARANTY
ASSOCIATION, Successor to RELIANCE
INSURANCE COMPANY,
Carrier/Defendants.

Appeal by plaintiff from an opinion and award entered 14 February 2005 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 January 2006.

Brent Adams & Associates, by Pamela Newell Williams, for plaintiff-appellant.

Young Moore and Henderson, P.A., by Jeffrey T. Linder and Angela N. Farag, for defendants-appellees.

LEVINSON, Judge.

Plaintiff (Lazona Gail Spears) appeals from an Opinion and Award of the North Carolina Industrial Commission awarding plaintiff temporary total disability and medical benefits. We affirm.

The relevant facts are summarized as follows: On 4 January 2000, plaintiff was pushed by a co-worker as plaintiff was rising from her chair. At the time of the incident, plaintiff had been employed as an Employee Health and Infection Control Coordinator for approximately nine years. Plaintiff had not been employed in direct patient care for approximately thirteen years. Following the incident, from January 2000 until October 2000, plaintiff was treated by various physicians for neck pain and headaches. On 3 February 2000, plaintiff sought treatment with Dr. Linda Robinson, and complained of right facial weakness and right eyelid dipping. Plaintiff was referred to Dr. Pamela Whitney, a neurologist, in October 2000. Dr. Whitney diagnosed plaintiff's headaches as occipital neuralgia. Dr. Whitney testified that occipital neuralgia "could be trauma-related." Dr. Whitney further testified that she "believed that plaintiff's right facial weakness and right eyelid dipping were . . . not traumatic in origin and that its cause is unknown." On 9 February 2001, plaintiff was terminated from her employment with Betsy Johnson Hospital for poor work performance.

The Full Commission concluded that plaintiff "sustained an injury by accident arising out of and in the course of her employment on 4 January 2000 . . . [and that] plaintiff is entitled to total disability compensation for any days that she missed work prior to her termination due, in whole or in part, to her headaches or neck pain." According to the Full Commission, plaintiff had failed to establish total disability beyond her termination date of 9 February 2001. The Commission awarded plaintiff medical benefits for treatment related to her compensable injury, and compensation for certain days missed from work. From this opinion and award of the Industrial Commission, plaintiff appeals.

Plaintiff contends the Full Commission erred in finding and concluding that plaintiff is not entitled to temporary total disability benefits after 9 February 2001. However, plaintiff has failed to assign error to any specific findings of fact.

This Court's review of an award from the Industrial Commission is well established.

In reviewing a decision by the Commission, this Court's role "is limited to determining whether there is any competent evidence to support the findings of fact, and whether the findings of fact justify the conclusions of law." Under N.C.R. App. P. 10(a), our review is further limited to those findings of fact and conclusions of law properly assigned as error.

White v. Weyerhaeuser Co., 167 N.C. App. 658, 659, 606 S.E.2d 389, 392 (2005) (quoting *Cross v. Blue Cross/Blue Shield*, 104 N.C. App. 284, 285-86, 409 S.E.2d 103, 104 (1991)). Findings of fact not challenged on appeal are binding on this Court. *Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118 (2003).

[O]ur "appellate review depends on specific exceptions and proper assignments of error presented in the record on appeal. The assignment of error must clearly disclose the question presented. A single assignment [of error] generally challenging the sufficiency of the evidence to support numerous findings of fact . . . is broadside and ineffective." *Wade v. Wade*, 72 N.C. App. 372, 375-76, 325 S.E.2d 260, 266 (1985) (internal citations omitted); *see also*, N.C.R. App. P. 10. Therefore, the Full Commission's specific findings of fact are binding on appeal. However, the Commission's conclusions of law are reviewed *de novo*. *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004).

Haley v. ABB, Inc., ___ N.C. App. ___, ___, 621 S.E.2d 180, 184 (2005). Because plaintiff has not challenged any specific findings of fact made by the Industrial Commission, "[o]ur review . . . is limited to the question of whether the [Industrial Commission's] findings of fact, which are presumed to be supported by competent evidence, support its conclusions of law and judgment." *Okwara v. Dillard Dep't Stores, Inc.*, 136 N.C. App. 587, 591-592, 525 S.E.2d 481, 484 (2000).

The pertinent findings are:

1. On January 4, 2000, plaintiff, a registered nurse, was employed as the Employee Health and Infection Control Coordinator at Betsy Johnson Memorial Hospital (“Hospital”) when she was involved in a physical altercation with a co-worker, Clay Potter. Mr. Potter forcibly pushed plaintiff as she stood up from her chair. After the incident, Mr. Potter’s employment was terminated.

2. At the time of the incident, plaintiff had been employed in the non-clinical role of Employee Health and Infection Control Coordinator for approximately nine years. Plaintiff’s prior work history includes one year as a Clinical Instructor, two years as an Operating Room Manager and eight years as an Operating Room Scrub Nurse. Plaintiff had not been employed in a direct patient care capacity for approximately thirteen years.

3. Three days after the incident, plaintiff was seen at Betsy Johnson Memorial Hospital for complaints of right neck pain and headaches. Plaintiff was assessed with a muscular strain, hypertension and a tension headache.

4. On January 11, 2000, plaintiff sought treatment with Dr. Linda Robinson, her family physician, and reported a headache. Dr. Robinson found that plaintiff had hypertension and a neck strain.

5. On February 3, 2000, plaintiff presented to Dr. Robinson with new symptoms of right facial weakness and right eyelid dipping.

6. From February 3, 2000 through April 11, 2000, plaintiff was seen by Dr. Robinson on four occasions. For six months, from April to October 2000, plaintiff did not seek treatment for any of the aforementioned conditions.

7. On October 19, 2000, plaintiff was seen on referral from Dr. Robinson by Dr. Pamela Whitney, a neurologist. After reviewing plaintiff’s records and performing an examination, Dr. Whitney believed that plaintiff’s headaches originated in her right occipital nerve and diagnosed her with occipital neuralgia.

8. Dr. Whitney testified that occipital neuralgia could be trauma-related if a person hits the back of his or her head. Dr. Whitney further testified that plaintiff’s occipital neuralgia was not a “major neurologic problem,” but was just “bothersome.” Dr. Whitney did not place any work restrictions on plaintiff, and

testified that she assumed plaintiff was working during her treatment. Dr. Whitney further testified she would assign weight lifting restrictions for occipital neuralgia if the patient “did real physical work, where they’re constantly straining the neck muscles or something . . . to try and protect the neck.”

9. Dr. Whitney believed that plaintiff’s right facial weakness and right eyelid dipping were the result of a Bell’s palsy. Dr. Whitney testified that Bell’s palsy is not traumatic in origin and that its cause is unknown.

10. On October 25, 2000, plaintiff received a performance appraisal that did not please her. Plaintiff’s performance appraisal was worse than any of her prior evaluations and it was indicated that she did not meet performance standards in several categories. When afforded an opportunity to make comments about her evaluation, plaintiff noted she felt additional duties affected her job performance, but did not mention any physical problems as an explanation for her poor performance.

11. Plaintiff was subsequently referred to Rex Pain Management Center where she treated with Dr. Robert C. Jacobson. Plaintiff received right stellate ganglion blocks for her facial pain and right occipital nerve blocks for her headaches.

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14. On February 9, 2001, plaintiff was terminated for poor work performance unrelated to her compensable injury, for which a non-disabled employee would ordinarily have been terminated by employer-defendant.

15. Based upon the greater weight of the competent medical evidence of record, the undersigned find that plaintiff’s headaches, diagnosed as occipital neuralgia, and neck pain are causally related to her accident at work on January 4, 2000.

16. Plaintiff has failed to establish by the greater weight of the competent evidence of record that her other medical conditions are causally related to her accident at work on January 4, 2000.

17. Based upon the greater weight of the competent evidence of record, the undersigned find that plaintiff was temporarily totally disabled due to her compensable injury on any days that she missed work prior to her termination, due in whole or

in part to her headaches or neck pain. Plaintiff is entitled to compensation for the following days missed from work: January 11, 12, 18-21, 24-28 & 31, February 1, 3-5, 16, 17, 23 & 24, April 3 & 17, November 29-30 and December 11, 2000.

18. The undersigned finds that following her termination, plaintiff has failed to show that she is totally disabled. Based upon the greater weight of the competent evidence of record, plaintiff is capable of performing sedentary work based upon her education as a registered nurse and her work experience. Sedentary work is consistent with plaintiff's most recent work history. Bernard Moore, vocational counselor, identified several non-patient care (sedentary) jobs currently available in the local area. Plaintiff testified that she has not worked since January 2, 2001 and has not attempted to find work. Plaintiff has failed to show that she has conducted a reasonable job search to find suitable employment.

The Full Commission concluded:

1. Plaintiff sustained an injury by accident arising out of and in the course of her employment on January 4, 2000. N.C. Gen. Stat. §97-2(6).

2. As a result of her compensable injury, plaintiff is entitled to total disability compensation for any days that she missed work prior to her termination due, in whole or in part, to her headaches or neck pain. Plaintiff has failed to show that she has been totally disabled following her termination on February 9, 2001. N.C. Gen. Stat. §97-29. *Russell v. Lowes Product Distribution*, 108 N.C. App. 762, 425 S.E.2d 454 (1993).

3. Plaintiff was terminated for poor work performance, unrelated to her compensable injury, for which a non-disabled employee would ordinarily have been terminated by employer-defendant. *Seagraves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996).

4. Plaintiff is entitled to payment of medical expenses incurred or to be incurred as a result of her headache and neck pain conditions as may reasonably be required to effect a cure, provide relief, or lessen the period of disability. N.C. Gen. Stat. §§97-2(19); 97-25.

5. Defendant may be entitled to a credit for plaintiff's third party recovery pursuant to N.C. Gen. Stat. §97-10.2(j).

In the instant case, we easily conclude the Industrial Commission's findings of fact support its conclusions of law. Accordingly, the Opinion and Award in this case is

Affirmed.

Judges McCULLOUGH and ELMORE concur.

Report per Rule 30(e).