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NO. COA02-548

NORTH CAROLINA COURT OF APPEALS

Filed: 18 March 2003

JULIUS M. BENTON, Jr.,
Employee,
Plaintiff;

v.

North Carolina Industrial Commission
I.C. File No. 025841

SUTHERLAND PRECISION FRAMING,
Employer;

AMERICAN INTERNATIONAL
UNDERWRITERS / AIGCS,
Carrier;
Defendants.

Appeal by plaintiff from an Opinion and Award entered 11 January 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 8 January 2003.

Mako & Robinson, P.A., by Bruce H. Robinson, Jr., for plaintiff-appellant.

Robinson & Lawing, LLP, by Jolinda J. Babcock, for defendants-appellees.

STEELMAN, Judge.

Plaintiff, Julius M. Benton, Jr., appeals an Opinion and Award by the North Carolina Industrial Commission (Commission) in a workers' compensation case. For the reasons discussed herein, we affirm.

Plaintiff asserts that on 28 March 2000, he suffered an injury to his back, right shoulder and right hip after tripping over a tree stump and falling to the ground. At the time of the alleged

injury, plaintiff was working with defendant, Sutherland Precision Framing, as a subcontractor in Wilmington, North Carolina. He was carrying four 2x4s in his arms when he tripped. As a result of the injury, plaintiff saw Dr. William Parker in Wilmington.

Plaintiff filed a Form 18 Notice of Accident. Thereafter, a Form 19 was filed with the Industrial Commission. Defendant then filed a Form 61 Denial of Claim on 12 May 2000, stating that plaintiff did not sustain an injury by accident. On 24 May 2000, plaintiff filed a Form 33 Request for Hearing.

This matter was heard before the deputy commissioner, who denied plaintiff's claim and ordered him to pay defendants' attorney fees in the amount of \$4,813.00 for failure to comply with an order of the Commission regarding discovery. On 11 January 2001, Commissioners Bernadine S. Ballance, Dianne C. Sellers and Christopher Scott filed an Opinion and Award denying plaintiff's claim, but declining to impose sanctions and award attorney fees to defendants.

Prior to the injury alleged in this matter, plaintiff had suffered a number of injuries, including four workers' compensation claims, and one automobile claim. Since 1996 plaintiff was limited to sedentary work by his physician, and was limited to lifting 15 pounds. Plaintiff applied to work with defendant as a framer. He failed to disclose to defendant his work restrictions. On 28 March 2000, the owner advised plaintiff that due to his mistakes on the construction site, and his inability to perform required work, his employment was terminated. Shortly thereafter, plaintiff contends that he was injured on the job.

In reviewing a decision of the Commission, we are limited to reviewing whether competent evidence supports the Commission's findings, and whether the findings of fact support the conclusions of law. *Sheehan v. Perry M. Alexander Constr. Co.*, 150 N.C. App. 506,

563 S.E.2d 300 (2002). In this case, plaintiff made no exceptions to the Commission's findings of fact, and they are thus binding on appeal. *Creel v. Town of Dover*, 126 N.C. App. 547, 486 S.E.2d 478 (1997). Our review is limited as to whether the Commission's findings support its conclusions of law.

Plaintiff assigns six errors of the Commission: (1) it demonstrated bias, and became an advocate for the employer; (2) it improperly impeached the plaintiff with convictions in violation of Rule 609(b) of the North Carolina Rules of Evidence; (3) it improperly considered his prior workers' compensation claims; (4) it failed to rule on alleged violations of N.C. Gen. Stat. §97-18, which may have been the basis of a class action lawsuit; (5) it demonstrated bias resulting in a conclusions that he lacked credibility; and (6) it considered his handicap in violation of the Americans with Disabilities Act and Chapter 168A of the North Carolina General Statutes.

As to the first, second and fifth assignments of error, the Commission is the "sole judge of the weight and credibility of the evidence." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). The Commission is not bound by the Rules of Evidence. *Kisiah v. W.R. Kisiah Plumbing*, 124 N.C. App. 72, 476 S.E.2d 434 (1996), *rev. denied*, 345 N.C. 343, 483 S.E.2d 169 (1997). Additionally, the Commission is not required to "explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible." *Deese*, at 116-117, 530 S.E.2d at 553. Further, there is nothing in the record that in any way supports plaintiff's assertion that the Commission demonstrated bias in favor of the employer. This assignment of error is overruled.

As to the third assignment of error, the Commission made extensive findings of plaintiff's prior injuries, some of which were work related, and some of which were non-work related. These findings were pertinent to the Commission's conclusion of law that the plaintiff

failed to prove a causal relationship between his alleged injuries and his employment. This assignment of error is therefore overruled.

As to the fourth assignment of error, the Commission found that the employer's "denial was made within 45 days of the date of the alleged accident and within 38 days of the filing of the Form 18. The time frame within which the defendant filed the Form 61 was reasonable and justified based upon the facts of this case." This finding supported the Commission's conclusion that the denial of the plaintiff's claim was reasonable and timely under the provisions of N.C. Gen. Stat. §97-18(c). This assignment of error is overruled.

As to the sixth assignment of error, the Americans with Disabilities Act and the Persons with Disabilities Protection Act (Chapter 168A of the North Carolina General Statutes) prohibit employers from discriminating against their employees as to certain disabilities. These statutes deal specifically with the employer-employee relationship, and do not bar the Commission from considering plaintiff's past medical conditions in determining whether the plaintiff had a compensable injury under Chapter 97. This assignment of error is overruled.

We hold that the uncontested findings of the Commission support its conclusions of law, and the order of the Commission is therefore affirmed.

AFFIRMED.

Judges MARTIN and HUDSON concur.

Report per Rule 30(e).