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NO. COA02-785

NORTH CAROLINA COURT OF APPEALS

Filed: 1 April 2003

KIMBERLY HALL,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 035365

FORSYTH MEDICAL CENTER,
Employer,

and

NOVANT HEALTH,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 12 March 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 March 2003.

Raymond M. Marshall for plaintiff appellee.

Orbock, Bowden, Ruark & Dillard, P.C., by Barbara E. Ruark, for defendant appellants.

TIMMONS-GOODSON, Judge.

Forsyth Medical Center (“employer”) and Novant Health (“carrier”) (collectively, “defendants”) appeal from a 12 March 2002 opinion and award of the North Carolina Industrial Commission (“the Commission”) awarding Kimberly Hall (“plaintiff”) workers’ compensation benefits for a shoulder injury. For the reasons set forth herein, we affirm the opinion and award of the Commission.

The relevant facts of the present appeal are as follows: Plaintiff began her employment with defendant-employer as a registered nurse in the intensive care unit in February of 1999. On 24 April 2000, plaintiff and another registered nurse attempted to turn a patient who was hooked up to life support tubes. The patient's ventilator tube dislodged from the tracheotomy as the nurses turned the patient over. While plaintiff supported the patient with her right arm, she reached forward with her left arm to reinsert the tube and experienced pain in her right shoulder. A treating physician later determined that plaintiff had torn the rotator cuff of her right shoulder, a condition for which plaintiff underwent arthroscopic surgery.

After defendant-employer denied plaintiff's claim for workers' compensation benefits, a deputy commissioner of the Commission conducted a hearing on the matter. The deputy commissioner allowed plaintiff coverage under the Workers' Compensation Act, finding that shifting all of the patient's weight onto plaintiff's right arm and shoulder was a deviation from her normal duties. Upon appeal, the Commission affirmed the award. In an opinion and award filed on 12 March 2002, the Commission entered the following pertinent facts:

3. On or about April 24, 2000, plaintiff and a co-worker, Jan Rogers, another RN in the ICU, were in the process of turning a 200-pound patient in bed when the ventilator tube, which ran into the patient's throat through a tracheotomy, came out of the tracheotomy. Plaintiff released the pad that the patient was on with her left hand to catch the tube and attempted to place it back into the tracheotomy so the patient would be able to continue breathing. When plaintiff released the pad with her left hand she felt pain in her right shoulder. The patient would not be able to breathe if the tube was not attached to the tracheotomy; therefore, plaintiff had to react quickly and reach to replace the tube.

4. Plaintiff attempted to work after this incident but was unable to continue due to the increased pain she was experiencing. Plaintiff left work after reporting the incident to her supervisor and went to Prime Care where she was treated by placing her right arm in a sling and instructed not to use her arm

until further evaluation. Thereafter, plaintiff was sent to Dr. Jerome Jennings for further evaluation.

5. On May 11, 2000, plaintiff initially saw Dr. Jennings who diagnosed plaintiff's condition as a probable internal tear of the rotator cuff with impingement of the right shoulder. On May 16, 2000, Dr. Jennings performed arthroscopic surgery on plaintiff's right shoulder, which confirmed his original diagnosis.

6. Dr. Jennings removed plaintiff from work beginning May 11, 2000 and continuing through June 6, 2000 when he released her to light duty. Thereafter, Dr. Jennings released plaintiff without restrictions on or about July 19, 2000. Although Dr. Jennings released plaintiff to return to regular duty on July 19, 2000, plaintiff did not return to regular duty because of the lack of strength in her right arm and shoulder. Dr. Jennings placed plaintiff in therapy in August 2000 to strengthen her right shoulder and arm.

7. Dr. Jennings found plaintiff was at maximum medical improvement, but he did not provide her a permanent partial disability rating.

8. According to Dr. Jennings, plaintiff's rotator cuff tear resulted from plaintiff attempting to hold the patient on April 24, 2000 after the tube came loose.

9. When plaintiff reacted to the immediate need to replace the tube and released the pad with her left hand, which she and Ms. Rogers were using to turn a patient, and shifted all the weight onto her right arm and shoulder, there was an interruption of her normal work routine. Plaintiff normally turns a patient with a pad using two hands but on this occasion there was an urgency to replace the tube to allow the patient to [breathe], which caused plaintiff to be in an awkward position which placed more weight on her right arm.

10. Ms. Roper Halverson, a nurse manager and plaintiff's supervisor, indicated that she had been a registered nurse for 23 years including in the ICU. Ms. Halverson stated that tracheotomy tubes sometimes become disconnected and that when one does, it is an emergency situation that must be handled promptly to restore oxygen to the patient. Although Ms. Halverson stated that a tube had come out while she was working with a patient, she could not state how often such an incident would occur while turning a patient which would require an immediate reaction.

Based on the above-stated findings of fact, the Commission concluded that plaintiff sustained an injury by accident on 24 April 2000 while in the course and scope of employment with her employer and awarded her benefits. Defendants appeal from the opinion and award.

Defendants contend there was insufficient evidence in the record to support the Commission's determination that plaintiff's injury to her shoulder arose out of her employment. For the reasons stated herein, we affirm the opinion and award of the Commission.

“The Commission's determination that an accident *arose out of and in the course of* employment is a mixed question of law and fact; thus, this Court may review the record to determine if the findings and conclusions are supported by sufficient evidence.” *Cauble v. Soft-Play, Inc.*, 124 N.C. App. 526, 528, 477 S.E.2d 678, 679 (1996), *disc. review denied*, 345 N.C. 751, 485 S.E.2d 49 (1997). As long as the Commission's findings are supported by competent evidence of record, they will not be overturned on appeal. *See DeVine v. Steel Co.*, 227 N.C. 684, 685, 44 S.E.2d 77, 78 (1947). “An injury arises out of the employment ‘when it is a natural and probable consequence or incident of the employment and a natural result of one of its risks, so there is some causal relation between the injury and the performance of some service of the employment.’” *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 496, 340 S.E.2d 116, 124 (quoting *Robbins v. Nicholson*, 281 N.C. 234, 239, 188 S.E.2d 350, 354 (1972)), *disc. review denied*, 317 N.C. 334, 346 S.E.2d 140 (1986); N.C. Gen. Stat. §97-2(6) (2001).

In the instant case, plaintiff testified that, while turning a patient in the course of her duties, the ventilator tube dislodged from the patient's throat. The second attending nurse, Jan Roper, corroborated plaintiff's recollection of the events. Plaintiff testified that the patient could not breathe without the ventilator tube in place. Further, plaintiff stated that she had never

experienced a tracheotomy tube detaching from the receptacle in a patient's throat while turning a patient, and that the event completely surprised her. She further testified that she knew of no other nurses who had experienced a similar event, and that during her training, she had never been informed that such an incident could occur. Plaintiff's supervisor, Roper Halverson, testified that incidences of a ventilator tube detaching are uncommon. Finally, Dr. Jennings testified that plaintiff's shoulder "was injured in this manner that she described." This evidence sufficiently supports the Commission's findings that plaintiff acted to benefit her employer, and that her injury occurred as a direct result of her employment, and we overrule defendants' assignment of error.

We hold that there is adequate evidence of record supporting the Commission's findings and conclusions that plaintiff's injury arose out of and in the course of her employment. We therefore affirm the opinion and award of the Commission.

Affirmed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).