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NO. COA07-794

NORTH CAROLINA COURT OF APPEALS

Filed: 18 March 2008

PATRICIA M. MEANY,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 053285

WAKEMED,
Employer,

SELF-INSURED (KEY RISK MANAGEMENT
SERVICES, Servicing Agent),
Defendant.

Appeal by defendants from Opinion and Award of the North Carolina Industrial Commission entered 26 March 2007. Heard in the Court of Appeals 15 January 2008.

Wilson & Ratledge, PLLC, by Kristine L. Prati, for plaintiff-appellee.

Cranfill, Sumner & Hartzog, L.L.P., by Robin H. Terry and Jaye E. Bingham, for defendants-appellants.

WYNN, Judge.

If a claimant's injury cannot fairly be traced to her employment as a contributing proximate cause, it is not compensable under our Workers' Compensation Act.[**Note 1**] Here, the defendants argue the Full Commission erred by concluding that plaintiff's deconditioned state was a direct and proximate result of her compensable injury. Because the record contains

competent evidence supporting the Full Commission's finding of a causal connection, and in turn, the findings of fact support the conclusions of law, we affirm.

Plaintiff Patricia Meany began working at Western Wake Medical Center (WakeMed) in 1992 as a nurse. On 4 February 2000, Ms. Meany suffered a compensable injury when her right arm became trapped under a deceased patient she was attempting to move. Although WakeMed accepted the compensability of Ms. Meany's injury, it did not file a Form 60, admitting her right to compensation, until 2 January 2002.

After her injury, Ms. Meany continued to work except for a period of time after she had surgery on her right elbow in December 2001. Ms. Meany was treated by a number of doctors for neck, right elbow, and right arm pain, although Dr. Hadley Callaway was initially Ms. Meany's authorized treating physician. On 29 August 2000, Ms. Meany saw Dr. Kenneth Carnes, an adult neurologist, regarding her right-sided neck and arm pain. After examining Ms. Meany, Dr. Carnes was concerned that she had an underlying cervical condition, so he referred her to Dr. Robin Koeleveld, a neurosurgeon. Dr. Koeleveld concluded that Ms. Meany was not a surgical candidate, but she continued to report persistent right-sided neck and shoulder pain.

On 7 September 2000, Dr. Carnes performed EMG testing on Ms. Meany and found "no evidence to suggest that one of her cervical nerve roots was permanently or irreversibly damaged at that time point." On 21 September 2000, although Ms. Meany had reported some improvement with medication and physical therapy, she requested a prescription for deep-tissue massage and a home cervical-traction unit from Dr. Carnes. In December 2001, Ms. Meany had surgery on her right elbow.

Between September 2000 and April 2002, Dr. Callaway continued to treat Ms. Meany, and she did not see Dr. Carnes again until 1 April 2002. On 17 September 2002, Dr. Callaway officially transferred Ms. Meany's case to Dr. Carnes.

On 31 July 2002, Ms. Meany filed a Request for Hearing due to WakeMed's refusal to provide her with medical treatment for her cervical condition. On 18 March 2003, based on a referral from Dr. Carnes, Ms. Meany was presented to Dr. Mukesh Kamdar, a psychiatrist, who prescribed her medication to treat her depression and anxiety related to her chronic illness and pain. Ms. Meany was also referred to Dr. Deborah McFarlane, a cognitive behavioral psychologist, and began seeing her on a consistent basis starting on 28 March 2003.

Ms. Meany summarized Dr. Carnes's diagnosis as a vertebral artery spasm. She described her symptoms as including loss of vision, vertigo, depression and anxiety, periods of incontinence, herniations, bony growths on the spine, thoracic problems, peripheral paresthesias and weakness, and weight loss.

On 6 May 2003, Deputy Commissioner Rowell filed his Opinion and Award, approving Dr. Carnes as Ms. Meany's treating physician effective retroactively as of 11 October 2002; concluding that Ms. Meany was entitled to have WakeMed "provide all medical compensation reasonably necessary as a result of her compensable neck related problems"; and ordering WakeMed to pay Ms. Meany temporary total disability of \$588.00 per week from 11 October 2002 until further order of the Commission.

In November 2003, Jerry Benjamin Bowman took over as the adjuster on Ms. Meany's claim. From December 2003 through 2004, Dr. Carnes recommended and prescribed a variety of treatments for Ms. Meany, including her admission to Rex Hospital in December 2003, eight hours per day of home healthcare and home physical therapy, a hospital bed, and neuromuscular

massage. Mr. Bowman denied payment for all of these recommendations, with the exception of six hours per day of home physical therapy.

In March 2004, WakeMed referred Ms. Meany to Dr. Moira Artigues for an Independent Psychiatric Examination, and Dr. Jeffery Siegel for an Independent Medical Examination. Dr. Artigues diagnosed Ms. Meany with Major Depressive Disorder, as “an indirect result of the work injury.” After examining Ms. Meany, Dr. Siegel concluded that Ms. Meany had no ongoing physical impairment, did not require future medical treatment, did not need a special bed or caregivers, and suffered from a conversion disorder unrelated to her work injuries.

When Mr. Bowman failed to authorize payment for some of Ms. Meany’s prescription medications and her December 2003 hospital stay, and failed to follow Dr. Carnes’s medical recommendations, Ms. Meany filed a Motion for Contempt against Mr. Bowman and Key Risk Management and a Motion for Medical Treatment. After a hearing on 4 October 2004 to determine the issues, Deputy Commissioner Wanda Taylor filed an Opinion and Award on 22 February 2006, concluding that as a direct and proximate result of Ms. Meany’s 4 February 2000 compensable injury and resulting compensable psychological conditions, Ms. Meany had become severely deconditioned and functionally bedridden; Ms. Meany was entitled to temporary total disability compensation of \$588.00 per week from 11 October 2002 and continuing; and Ms. Meany was entitled to have WakeMed pay for medical treatment, including certain medication, home healthcare for eight hours per day, at home physical therapy, neuromuscular massage, a hospital bed, and treatment with Dr. Kamdar and Dr. McFarlane.

WakeMed gave notice of appeal to the Full Commission on 6 March 2006. In its Opinion and Award filed on 3 April 2007, the Full Commission affirmed the Opinion and Award of Deputy Commissioner Taylor, with some modifications, and awarded Ms. Meany attorneys’ fees

in the amount of \$2,000 because “defendant’s actions were not based upon reasonable grounds. N.C. Gen. Stat. §97-88.1.”

On appeal to this Court, WakeMed contends the Full Commission erred by (I) concluding that Ms. Meany’s psychological condition and deconditioned state are a direct and proximate result of her neck and arm injury, and (II) awarding attorneys’ fees to Ms. Meany.

I.

In reviewing the Full Commission’s decision, we are constrained by the well-established limitations that “(1) the full Commission is the sole judge of the weight and credibility of the evidence, and (2) appellate courts reviewing Commission decisions are limited to reviewing whether any competent evidence supports the Commission’s findings of fact and whether the findings of fact support the Commission’s conclusions of law.” *Deese v. Champion Int’l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000) (citing *Adams v. AVX Corp.*, 349 N.C. 676, 680-81, 509 S.E.2d 411, 413-14 (1998)).

WakeMed argues that the Full Commission erred by concluding that Ms. Meany’s deconditioned state was a direct and proximate result of her compensable neck and arm injury. Specifically, WakeMed argues that it was Ms. Meany’s overreaction to the handling of her workers’ compensation case, rather than her initial injury, that caused her psychological condition and deconditioned state.

For a claimant to receive benefits under our Workers’ Compensation Act, the injury must result from an “accident arising out of and in the course of the employment.” N.C. Gen. Stat. §97-2(6) (2005). “The phrase ‘arising out of’ refers to the requirement that there be some causal connection between the injury and claimant’s employment.” *Creel v. Town of Dover*, 126 N.C. App. 547, 552, 486 S.E.2d 478, 481 (1997). If a claimant’s injury cannot be traced to his

employment as a contributing proximate cause, it is not compensable under the Workers' Compensation Act. *Horn v. Sandhill Furniture Co.*, 245 N.C. 173, 176, 95 S.E.2d 521, 523 (1956) (citations omitted).

In this case, four doctors were asked whether they had an opinion to a reasonable degree of medical certainty as to whether Ms. Meany's condition was related to her 4 February 2000 injury. In response to that question, Dr. Siegel, a neurologist, opined that there was no causal connection between her conversion disorder and February 2000 injuries. However, three other doctors testified to the existence of a causal connection. Dr. McFarlane stated that she disagreed with Dr. Siegel, and instead believed "that her depression is a result of dealing with the losses that she has incurred as a result of the injuries that she suffered at work." Dr. Artigues also stated that she disagreed with Dr. Siegel because she believed Ms. Meany's depression "was at least an indirect result of the injury and the consequences." Additionally, Dr. Carnes, Ms. Meany's treating physician, stated that in his opinion, "the injuries she suffered at work in February of 2000 caused symptoms that I originally saw her for in August 2000, and I believe they're the cause of her continuing symptoms that have required additional visits up to this time point."

Although Dr. Siegel did not believe Ms. Meany's psychological condition and deconditioned state were related to her 4 February 2000 injury, the Full Commission, in its discretion, gave greater weight to the testimony of Dr. McFarlane, Dr. Artigues, and Dr. Carnes. Accordingly, we find that the record contains competent evidence supporting a causal connection between Ms. Meany's 4 February 2000 injury and her psychological condition and deconditioned state. Because the record contains competent evidence to support the Full Commission's findings of fact, and in turn, the findings of fact support the conclusions of law, we find no error.

II.

Defendant next contends the Full Commission erred by awarding attorneys' fees to Ms. Meany pursuant to N.C. Gen. Stat. §97-88.1 (2005). "The standard of review for an award of attorneys' fees by the Full Commission is abuse of discretion." *Clawson v. Phil Cline Trucking, Inc.*, 168 N.C. App. 108, 116, 606 S.E.2d 715, 720 (2005).

Section 97-88.1 of our General Statutes provides: "If the Industrial Commission shall determine that any hearing has been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings including reasonable fees for defendant's attorney or plaintiff's attorney upon the party who has brought or defended them." N.C. Gen. Stat. §97-88.1. The purpose of section 97-88.1 is "to prevent stubborn, unfounded litigiousness which is inharmonious with the primary purpose of the Workers Compensation Act to provide compensation to injured employees." *Whitfield v. Lab. Corp. of America*, 158 N.C. App. 341, 358, 581 S.E.2d 778, 789 (2003) (citing *Beam v. Floyd's Creek Baptist Church*, 99 N.C. App. 767, 768, 394 S.E.2d 191, 192 (1990)).

In this case, the Full Commission concluded that Ms. Meany was entitled to attorneys' fees because "defendant's actions were not based upon reasonable grounds." The Full Commission found as fact that WakeMed refused to approve written prescriptions from Ms. Meany's authorized treating physician for attendant care, medical services, and medication; failed to pay for Ms. Meany's 16 December 2003 hospitalization; and presented no evidence that such care was not medically necessary, except for the testimony of Dr. Seigel, a neurologist, who saw Ms. Meany once for approximately fifteen to twenty minutes.

Although WakeMed argues that it reasonably defended on the basis of causation, the record and transcripts support the Full Commission's finding of fact. Mr. Bowman, the claims

adjuster, admitted that WakeMed did not pay for a number of medical treatments nor Ms. Meany's hospitalization, and Dr. Seigel is the only doctor who believed Ms. Meany's condition was not caused by her compensable injury. Additionally, the record contains three separate Opinion and Awards, from Deputy Commissioner Rowell, Deputy Commissioner Taylor, and the Full Commission, all concluding that Ms. Meany is entitled to have WakeMed pay for all reasonably necessary medical treatments.

As the purpose of section 97-88.1 is "to prevent stubborn, unfounded litigiousness," *id.* at 358, 581 S.E.2d at 789, we cannot conclude that the Commission abused its discretion by awarding Ms. Meany attorneys' fees. Accordingly, we affirm.

Affirmed.

Judges MCGEE and CALABRIA concur.

Report per Rule 30(e).

NOTE

1. *Horn v. Sandhill Furniture Co.*, 245 N.C. 173, 176, 95 S.E.2d 521, 523 (1956) (citations omitted).