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NO. COA04-1339

NORTH CAROLINA COURT OF APPEALS

Filed: 16 August 2005

TERRANCE J. MORAN,  
Employee/Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 072028

TURNAMICS, INC.,  
Employer,

and

NORTH CAROLINA INSURANCE  
GUARANTY ASSOCIATION,  
(Cambridge Integrated Services  
Group) Servicing Agent,  
Defendants.

Appeal by defendants from opinion and award entered 3 June 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 June 2005.

*Root & Root, P.L.L.C., by Louise Critz Root, for plaintiff-appellee.*

*Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Ryan W. Keevan and Edward L. Eatman, for defendants-appellants.*

LEVINSON, Judge.

Defendants appeal from an Opinion and Award of the Industrial Commission awarding plaintiff medical and disability workers' compensation benefits. We affirm.

The factual background of this appeal is largely undisputed, and may be summarized as follows. Plaintiff (Terrance Moran) was 38 years old at the time of the hearing before the deputy

commissioner. He attended school through the ninth grade, and later obtained a GED. In 2000 he had been working for defendant (Turnamics, Inc.) for over 13 years. Plaintiff was employed as a machine operator, a position requiring the use of both hands to set up and run machines.

In May 2000 plaintiff experienced weakness in his right wrist, hand, and fingers, and an inability to extend the first, second, and third fingers of his right hand. His family physician referred him to a neurosurgeon, Dr. Seyed Emadian. At Dr. Emadian's recommendation, plaintiff underwent nerve conduction velocity testing with another physician, Dr. Daniel Garber. In Dr. Garber's opinion, plaintiff appeared to have posterior interosseous syndrome, which was "definitely work-related." Plaintiff was then referred to Dr. Christopher Lechner, an orthopaedic surgeon who diagnosed plaintiff as suffering from posterior interosseous palsy. When nonsurgical treatment failed to bring plaintiff any relief, Dr. Lechner recommended surgery.

Plaintiff's first wrist surgery was performed by Dr. Lechner on 6 November 2000, and revealed that plaintiff suffered from compression of the posterior interosseous nerve, and from a second point of compression of the nerve under the supinator. When Dr. Lechner saw plaintiff in April 2001, he noted plaintiff's inability to extend his wrist, fingers, or thumb of his right hand, a condition known as "wrist drop." He diagnosed plaintiff with overuse syndrome of the right upper extremity with mild tendonitis, and increased plaintiff's weight restriction to ten pounds.

In May 2001 plaintiff's family physician prescribed medication to treat plaintiff's symptoms of depression and anxiety. On 23 May 2001 he was admitted to Copestone, the psychiatric unit of the Mission-St. Joseph's Health System. At Copestone, plaintiff began treatment with a psychiatrist, Dr. Stewart Hudson. Plaintiff spent 12 days as an inpatient at Copestone, then continued outpatient psychotherapy with a clinical social worker, Sarah Mimms. On 14 August 2001 plaintiff underwent a second wrist surgery, which provided some

improvement in his physical condition. Plaintiff returned to his employment with defendant on 19 November 2001, and worked until 9 February 2002, when his employment was terminated.

On 4 March 2002, several weeks after plaintiff lost his job, he was readmitted to Copestone Hospital. On his release, plaintiff worked at another machine shop, Wright's Machine and Tool, for about six weeks; plaintiff lost this job when he was readmitted to Copestone in May 2002. He was released from the hospital in June 2002, and next worked for Day International from 5 August to 8 November 2002. However, plaintiff's wrist drop prevented him from performing up to his employer's standards; on 8 November 2002 he was told his work was not "up to par" and he was let go. Plaintiff then worked as a machine operator for Black Mountain Machine for several weeks, starting 18 November 2002. In January 2003 plaintiff was fired by Black Mountain, and was readmitted to Copestone. At the time of the hearing Dr. Hudson testified that plaintiff was not capable of working, and was still in Copestone.

Defendants filed two Industrial Commission Forms No. 60, admitting that plaintiff's hand and wrist injury was a compensable occupational disease, and paid plaintiff workers' compensation disability benefits for the time periods 26 September to 13 October 2000, and 20 August to 19 November 2001. On 31 August 2001 plaintiff filed an Industrial Commission Form No. 18 for medical and disability workers' compensation benefits for his psychological treatment. When defendants denied plaintiff's claim for psychiatric benefits, plaintiff filed a Form 33 request for hearing. The case was heard before Industrial Commission Deputy Commissioner George R. Hall, III, on 19 November 2002. On 27 June 2003 Commissioner Hall filed an Opinion and Award that awarded plaintiff medical and disability benefits, "including psychiatric care and counseling for the psychiatric problems [that] developed after this injury[.]" Defendants appealed to the Full Commission, which heard the case on 20 January 2004. On 3

June 2004 the Commission issued an Opinion and Award affirming the deputy commissioner. From this Opinion and Award defendants timely appealed.

#### Standard of Review

Review of an opinion and award of the Industrial Commission is generally “limited to the consideration of two issues: (1) whether the Commission’s findings of fact are supported by competent evidence; and (2) whether the conclusions of law are supported by the findings of fact. When there is any evidence in the record that tends to support a finding of fact, the finding of fact is supported by competent evidence and is conclusive on appeal.” *Cannon v. Goodyear Tire & Rubber Co.*, \_\_ N.C. App. \_\_, \_\_, \_\_ S.E.2d \_\_, \_\_ (2005 N.C. App. Lexis 1254) (filed 5 July 2005) (citations omitted). “The findings of fact of the Industrial Commission are conclusive on appeal when supported by competent evidence, even though there [may] be evidence that would support findings to the contrary.” *Jones v. Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965). In making determinations of fact, “[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.” *Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)). Furthermore, “[f]indings of fact not assigned as error are conclusively established on appeal.” *Hensley v. Indus. Maint. Overflow*, 166 N.C. App. 413, 418, 601 S.E.2d 893, 897 (2004) (citing *Robertson v. Hagood Homes, Inc.*, 160 N.C. App. 137, 140, 584 S.E.2d 871, 873 (2003)), *disc. review denied*, \_\_ N.C. \_\_, 613 S.E.2d 690 (2005).

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Defendants argue that the Commission erred by concluding that plaintiff’s compensable injury was a significant contributing factor in his psychiatric illness, on the grounds that the Commission “relied upon speculative expert medical testimony” and that it “ignored . . . salient

facts” demonstrating the speculative nature of the testimony of Dr. Hudson and Mimms. On this basis, defendants contend that the Commission’s conclusions of law are not supported by competent findings of fact. We disagree.

“All natural consequences that result from a work-related injury are compensable under the Workers’ Compensation Act. Therefore, when a work-related injury leaves an employee in a weakened state that results in further injury, the subsequent injury is compensable.” *Cannon*, \_\_\_ N.C. App. at \_\_, \_\_ S.E.2d at \_\_ (citing *Roper v. J.P. Stevens & Co.*, 65 N.C. App. 69, 73-74, 308 S.E.2d 485, 488 (1983), and *Heatherly v. Montgomery Components, Inc.*, 71 N.C. App. 377, 381-82, 323 S.E.2d 29, 31 (1984)). Furthermore, this Court has “previously held that the aggravation of pre-existing psychiatric problems is compensable if that aggravation is caused by a work-related physical injury.” *Calloway v. Memorial Mission Hosp.*, 137 N.C. App. 480, 485, 528 S.E.2d 397, 401 (2000) (citing *Toler v. Black & Decker*, 134 N.C. App. 695, 701, 518 S.E.2d 547, 551 (1999)).

With regard to proof of a causal relationship between a claimant’s injury and condition, the North Carolina Supreme Court has held:

In a worker’s compensation claim, the employee has the burden of proving that his claim is compensable. An injury is compensable as employment-related if any reasonable relationship to employment exists. Although the employment-related accident need not be the sole causative force to render an injury compensable, the plaintiff must prove that the accident was a causal factor by a preponderance of the evidence.

*Holley v. ACTS, Inc.*, 357 N.C. 228, 231-32, 581 S.E.2d 750, 752 (2003) (internal quotation marks and citations omitted). Moreover:

‘[W]here the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury.’ However, when such expert opinion testimony is based merely upon speculation and conjecture, it can be of no more value than

that of a layman's opinion. As such, it is not sufficiently reliable to qualify as competent evidence on issues of medical causation.

*Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 915 (2000) (quoting *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980)). Nonetheless, a doctor's expert "testimony of 'a very strong linkage' regarding the causation of plaintiff's psychological condition to his accident is sufficient 'to take the case out of the realm of conjecture and remote possibility[.]'" *Workman v. Rutherford Elec. Membership Corp.*, \_\_ N.C. App. \_\_, \_\_, 613 S.E.2d 243, 253 (2005) (quoting *Holley*, 357 N.C. at 232, 581 S.E.2d at 753, and *Gilmore v. Hoke Cty. Bd. of Educ.*, 222 N.C. 358, 365, 23 S.E.2d 292, 296 (1942)).

In the instant case, the Commission's findings of fact included, in relevant part, the following:

10. . . . [Plaintiff] had not undergone treatment for anxiety or depression, nor had he received prescriptions to treat these problems prior to the hand problem of May 16, 2000.

. . . .

12. Dr. Hudson testified that when he first met plaintiff at [Copestone] hospital in May 2001, plaintiff had many concerns about his wrist drop. Dr. Hudson noted that plaintiff could not use his hand, and could not shake hands. Dr. Hudson testified, and the undersigned so finds, that plaintiff's wrist drop led to diminished self-esteem and caused an increase in anxiety. Dr. Hudson testified that when plaintiff was admitted to the psychiatric unit . . . he was experiencing severe depression, insomnia, anxiety, and fear. Dr. Hudson testified, and the Full Commission so finds, that the wrist drop problems that plaintiff experienced precipitated and were a significant contributing factor in the development of plaintiff's depression. Dr. Hudson also testified that plaintiff was worried about his job, which was a significant contributing factor to both the anxiety and depression that plaintiff experienced in May 2001.

13. Plaintiff was released after spending twelve days in a psychiatric unit, after which he continued care with Dr. Hudson and received counseling with Sara Mimms, a therapist at the Pisgah Institute. . . . [In August 2001] Dr. Lechner recommended,

and plaintiff underwent, a second surgery. . . . On August 1, 2001, Dr. Lechner explained to plaintiff that he would not have a ‘normal hand,’ . . . [and] that the surgery would not result in normal strength of the hand.

. . . .

18. After plaintiff’s admission to the Copestone Psychiatric Unit on May 23, 2001, he began to receive care with Sara Mimms, a therapist[,] . . . [who] testified that she first met plaintiff on June 7, 2001, at which point, she noted that plaintiff’s hand was very withered. . . . [O]n March 4, 2002, after he lost his job with defendant[,] [p]laintiff told Ms. Mimms that he was so depressed he could not get out of bed. Ms. Mimms testified that plaintiff was very tearful on this date, and expressed suicidal ideation. Plaintiff expressed hopelessness about getting a job to Ms. Mimms, who testified that plaintiff’s confidence ‘was really blown when he lost his job.’

19. Ms. Mimms testified, and the Full Commission so finds, that plaintiff’s depression began with the injury to his hand and worsened after plaintiff lost his job in February 2002.

20. Dr. Hudson also testified that plaintiff experienced an increase in his depression, with insomnia, anxiety, anhedonia, and decreased motivation after he was discharged. . . . As a result of the upswing of depression and anxiety, plaintiff was readmitted to the Copestone Psychiatric Unit . . . on March 4, 2002, . . . [which] noted that plaintiff had recently lost his job of 15 years, after which he had experienced increased symptoms of depression with suicidal ideation.

. . . .

22. Plaintiff was readmitted to the Copestone Psychiatric [hospital] . . . on May 29, 2002, again as a result of the depression, which plaintiff first began experiencing in 2001. This resulted in plaintiff’s losing his job with Wright’s Machine and Tool.

. . . .

26. Dr. Hudson testified . . . [plaintiff’s] readmitt[ance] to Copestone Psychiatric Unit in January 2003 . . . was precipitated by the fact that plaintiff had been having difficulty in his employment and had not been able to hold down a job[,and that] . .

. [plaintiff] lost his latest job. . . prior to this latest Copestone admission.

27. Dr. Hudson testified that as of the date of his deposition, January 31, 2003, plaintiff was unemployed and not capable of employment. Dr. Hudson and Ms. Mimms both testified that plaintiff needed additional counseling and psychiatric care.

....

29. Plaintiff . . . was unable to work from May 23, 2001, to August 20, 2001, both as a result of his hand injury and as a result of his psychiatric condition.

On the basis of these and other findings of fact, the Commission concluded that “[p]laintiff’s psychiatric problems, including depression and anxiety, for which he received care with Dr. Hudson and Sara Mimms, is causally related to the May 16, 2000 injury by accident and is a direct and natural result of this injury and ensuing physical disability.

Defendants concede that plaintiff’s therapist and psychiatrist each testified that plaintiff’s compensable injury contributed significantly to his psychological problems. They argue, however, that this testimony was merely ‘speculative,’ and that the Commission’s findings of fact are not supported by competent evidence, and do not support the Commission’s conclusions of law. We do not agree.

Dr. Hudson was deposed on 31 January 2003, and qualified as an expert in psychiatry. He began treating plaintiff for psychological illness in May 2001 when plaintiff was admitted to Copestone, with “fairly severe symptoms” of psychotic depression and anxiety. Dr. Hudson treated plaintiff with psychoactive medications, which plaintiff was still taking at the time of Dr. Hudson’s deposition. Dr. Hudson also testified that plaintiff was suffering from a generalized decline in cognitive functioning.



Dr. Hudson testified that plaintiff had “a lot of concerns about his wrist drop” which had “precipitated a lot of his problems with his self-esteem.” As a result of the weakness and neurological damage to his hand, plaintiff could not even shake hands, and his wrist hung limply. Therefore, plaintiff’s hand had “a certain effeminate quality to it and sort of a lack of strength,” and that plaintiff “couldn’t cope or tolerate with having this kind of disfigurement.” As a result, plaintiff experienced depression, loss of self esteem, and anxiety. Dr. Hudson explained:

I believe the illness we’ve been talking about . . . [was] a significant contributing factor, . . . the wrist drop. I just do. And his disability from that, the change in his self image, his . . . lowered self-esteem from that, the threat to . . . being able to take care of his family . . . I think that was a significant factor in triggering this illness. Whether there are obviously other predisposing factors, yes, of course, there are, but I think those are the ones that I’m most impressed with.

Dr. Hudson testified repeatedly that plaintiff’s compensable injury was a significant contributing factor in his psychological illness. For example:

I do think that the problem with the wrist drop, the problem with losing his job, the chronic pain secondary to the injury . . . is a significant causal factor, although it interacts, obviously, with other things, but I think it’s the contributing factor with him developing the severity of illness that he obviously has now, without which he may not have.

Other testimony was presented from Sarah Mimms, a licensed clinical social worker who had counseled plaintiff for over eighteen months at the time of her deposition. Her testimony echoed that of Dr. Hudson that plaintiff was very depressed, and that his wrist drop and resultant inability to work was a significant contributing cause. She agreed that plaintiff’s work was “more than just a paycheck,” and described plaintiff’s “belief that he must work, his commitment to his family to provide for them.”

Defendants argue that the Commission ignored evidence that demonstrates that Dr. Hudson's testimony was speculative, based on the presence of other stressful circumstances in plaintiff's life. Dr. Hudson was cross-examined about other sources of stress in plaintiff's life, including domestic problems, and family members with psychological problems, and defendants asked several times whether such factor(s) might be the true cause of plaintiff's psychological illness. Dr. Hudson reiterated that the other stressors in plaintiff's life "[couldn't] cause mental illness" although they might "contribute to his vulnerability to it," and that "[i]n my opinion and based on what he's told me and just what I have observed, the job loss, the wrist drop and all were much more significant psychological factors to him."

We conclude that defendants' argument that Dr. Hudson's testimony was speculative is based on selectively excerpted fragments of testimony taken out of context. We further conclude that Dr. Hudson was actually refusing to speculate on cross-examination. For example, defendants repeatedly asked Dr. Hudson about the possibility that plaintiff had been exposed to heavy metals, and that this exposure caused his depression. Dr. Hudson testified that exposure to heavy metals was no more than an unproven hypothesis, and, moreover, that even if plaintiff had been exposed to heavy metals, this would not cause his psychological illness. He stated that such exposure "may have increased his vulnerability to what happened . . . when he developed the wrist drop and all these issues that . . . I think were significant[.]" Defendants essentially argue that the evidence of other stressful factors in plaintiff's life renders the witnesses' testimony speculative. However:

[The psychiatrist's] cross-examination did reveal factors other than plaintiff's pain to which his depression may arguably have been 'secondary.' However, the existence of other possible causes of plaintiff's depression does not itself negate either the competency or probative value of [the doctor's] explicit opinion that plaintiff's depression was secondary to his pain as of [the relevant date].

*Haponski v. Constructor's, Inc.*, 87 N.C. App. 95, 103, 360 S.E.2d 109, 113-14 (1987).

We conclude the Commission's conclusions of law are supported by its findings of fact, which are amply supported by competent evidence, and that the Commission's Opinion and Award should be

Affirmed.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).