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NO. COA02-1155

NORTH CAROLINA COURT OF APPEALS

Filed: 16 September 2003

AMANDA JOHNSON,  
Employee,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 073741

N.C. LICENSE PLATE AGENCY,  
Employer,

THE HARTFORD,  
Carrier,  
Defendants.

Appeal by plaintiff from opinion and award filed 8 July 2002 by North Carolina Industrial Commission. Heard in the Court of Appeals 22 May 2003.

*Tippens & Zurosky, L.L.P., by Kirk S. Zurosky, for plaintiff appellant.*

*Morris York Williams Surlis & Barringer, L.L.P., by Stephen Kushner, for defendant appellees.*

McCULLOUGH, Judge.

Claimant Amanda Johnson was employed by the North Carolina License Plate Agency on 15 June 1998. For the first several months, she was a renewal clerk. In October of 1998, claimant became employed as a title clerk with the same employer. As a title clerk, claimant testified that, among other duties, she would have to reach for forms from customers and file them. She did this mostly with her left arm. According to her, she would reach across the counter

with her left arm a minimum of two hundred to four hundred times a day to receive and return the title paperwork.

Claimant started noticing pain in her left arm and hand in May of 2000. She was referred to Dr. Lois Osier at Charlotte Orthopedic Specialists and was seen by the doctor on 16 May 2000. She complained of pain and numbness in both hands and left shoulder. Dr. Osier found that claimant had a full range of motion and no evidence of carpal tunnel syndrome or neuropathy. Claimant however continued to be in pain through the next two months.

On 9 August 2000, she was referred to Dr. Anthony Wheeler. Dr. Wheeler testified that claimant had posture that was conducive to back problems. Apparently, Wheeler treated claimant with medication and physical therapy, after diagnosing a probable “repetitive-use or cumulative trauma disorder.” Treatment by Dr. Wheeler from 9 August through 10 October 2000 had not eased the pain of her symptoms. Dr. Wheeler excused claimant from working until her next appointment on 7 December 2000. An MRI was performed at that time and showed an “abnormality of the posterior labrum with possible small perilabral cyst.” Claimant was placed out of work indefinitely.

Dr. Wheeler referred claimant to Dr. Thomas Noonan, who saw claimant on 20 December 2000. She still had pain in the left arm, hand and shoulder area. Another MRI showed a “posterior labral tear with a small apparent labral cyst.” On 12 February 2001, Dr. Noonan performed arthroscopy on claimant’s left shoulder, “consisting of posterior labral repair, debridement superior labrum and debridement biceps tendon.” It was described as a significant tear.

Claimant was released to work on 2 April 2001, but was restricted from using her left arm. By July 2001, she had reached maximum medical improvement and retained 15% disability to her left arm. Claimant was out of work from 10 October 2000 to 2 April 2001.

Claimant filed a workers' compensation claim against her employer, defendant N.C. License Plate Agency, noting that she was injured or contracted an occupational disease to her left hand in March of 2000, caused by repetitive motion. A hearing was held on 28 June 2001 before a Deputy Commissioner of the Industrial Commission. The Deputy Commissioner heard from claimant and her treating physicians. Defendant presented the testimony of Alan Gorrod, a certified ergonomic evaluator. Gorrod had observed the job of the title clerk, though not as performed by claimant, and was of the opinion that the position was not likely to cause repetitive injury.

In an opinion and award filed 18 December 2001, the Deputy Commissioner found that claimant's left shoulder problems were the result of an occupational disease, which she contracted from her employment with defendant. This was due to claimant's job duties "where she constantly used her arms, reaching back and forth across the counters to wait on customers."

In so finding, the Deputy Commissioner discredited the testimony of Gorrod, finding that:

Mr. Gorrod evaluated the job for risk factors for carpal tunnel syndrome and myofascial pain. A careful reading of his report and deposition indicates his evaluations concentrated on the hands. Plaintiff's injury involved her left shoulder[.] The greater weight of the evidence is that plaintiff did not suffer from carpal tunnel syndrome.

Defendant appealed to the Full Commission, which reviewed the case on 17 May 2002. The Full Commission's opinion and award, filed 8 July 2002, reversed the Deputy

Commissioner's opinion and award by finding Gorrod's testimony relevant and discrediting other causation testimony. It found that:

14. Mr. Alan Gorrod, a certified ergonomic evaluator, evaluated the position of title clerk at defendant-employer on 23 October 2000. Mr. Gorrod observed five or six people performing title clerk functions. Plaintiff was not present and Mr. Gorrod did not observe her performing the job. The Full Commission accepts as competent evidence the conclusions by Mr. Gorrod that the position of title clerk is not likely to cause repetitive injury. Although Mr. Gorrod evaluated the job for risk factors for carpal tunnel syndrome and myofascial pain, the injuries initially claimed by plaintiff, it is also relevant to plaintiff's allegations concerning a shoulder injury. The greater weight of the evidence is that plaintiff did not suffer from carpal tunnel syndrome.

15. The greater weight of the evidence is that plaintiff's job duties did not cause or substantially contribute to plaintiff's left shoulder problems. Additionally, plaintiff's employment with defendant-employer did not place her at an increased risk of acquiring and aggravating shoulder problems as compared to member of the general public not so employed. Dr. Noonan explained that the labrale [sic] tear of the shoulder generally results from a traumatic event. Plaintiff, however, has not identified a single accidental event when the injury occurred and thereby has not established a compensable accidental injury. Although Dr. Noonan opined that, absent a traumatic event, repetitive motion could cause the tear, a careful reading of his testimony indicates that Dr. Noonan's testimony essentially is that he assumes the injury was caused by her work because he cannot find a cause for the injury. Dr. Noonan and Dr. Wheeler were not familiar with the duties of plaintiff's employment and the hypothetical questions asked by plaintiff's attorney were not an accurate description of the nature and frequency of plaintiff's work duties. Plaintiff's work was not repetitive. Neither Dr. Wheeler nor Dr. Noonan could describe the repetitive task that plaintiff allegedly performed that would cause the labrale [sic] tear; therefore, the opinions of Dr. Noonan and Dr. Wheeler concerning causation are given little weight.

As such, claimant had failed to establish that she had contracted an occupational disease.

Claimant appeals.

Claimant makes several arguments on appeal, all of which amount to an argument that the evidence before the Full Commission does not support its findings of fact and conclusions of law.

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The standard for appellate review of an opinion and award of the Industrial Commission is well settled. Review “is limited to a determination of (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are supported by the findings.” *Barham v. Food World*, 300 N.C. 329, 331, 266 S.E.2d 676, 678, *reh’g denied*, 300 N.C. 562, 270 S.E.2d 105 (1980); *see also Calloway v. Memorial Mission Hosp.*, 137 N.C. App. 480, 484, 528 S.E.2d 397, 400 (2000); *Shah v. Howard Johnson*, 140 N.C. App. 58, 61, 535 S.E.2d 577, 580 (2000), *disc. review denied*, 353 N.C. 381, 547 S.E.2d 17 (2001).

In addition, “so long as there is some ‘evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary.’” *Id.* at 61-62, 535 S.E.2d at 580 (quoting *Porterfield v. RPC Corp.*, 47 N.C. App. 140, 144, 266 S.E.2d 760, 762 (1980)). The *Calloway* Court went further stating that “our task on appeal is not to weigh the respective evidence but to assess the *competency* of the evidence in support of the Full Commission’s conclusions.” *Calloway*, 137 N.C. App. at 486, 528 S.E.2d at 401.

Claimant maintains that she contracted an occupational disease from her employment with defendant. The disease in question was the labral tear in her left shoulder which, according to claimant, arose due to cumulative repetitive trauma as a result of her job as a title clerk.

To prove the existence of an occupational disease, an employee must show three elements: (1) the disease is characteristic of a trade or occupation; (2) the disease is not an

ordinary disease of life to which the public is equally exposed; and (3) proof of a causal connection between the disease and the employment. *Hansel v. Sherman Textiles*, 304 N.C. 44, 52, 283 S.E.2d 101, 106 (1981); N.C. Gen. Stat. §97-53(13) (2001).

The Full Commission was presented with expert testimony as to the causation of claimant's ailment. Specifically, three expert witnesses testified as to the subject of causation: Two were medical doctors and the other was a stipulated expert in the field of ergonomics.

Alan Gorrod was stipulated by the parties as an expert in the field of ergonomics. As indicated in the Full Commission's Finding of Fact No. 14, Gorrod observed employees other than claimant performing the duties of a title clerk and found that the job did not have a repetitive nature so as to cause repetitive injury. According to Gorrod, there was low repetition due to frequent action breaks. Further, he found no forceful exertion, very little adverse range of motion, no unsupported posture, and little or no static posture factors. In addition, he noted no frequent reaching or overhead work. He concluded that the position of title clerk showed no specific risk factors for the development of repetitive motion injuries of any type.

The Deputy Commissioner felt that Gorrod concentrated on claimant's hands as they performed in the job (carpal tunnel syndrome) rather than her shoulder and thus did not rely on his findings. The Full Commission, however, as is their prerogative, found differently. It found that while it is true that Gorrod focused on carpal tunnel syndrome, his findings were still relevant as to whether the job of title clerk involved repetitive actions that could affect her shoulder.

As to the medical experts, both Dr. Wheeler and Dr. Noonan treated claimant for her pain. Dr. Wheeler diagnosed claimant with a repetitive use disorder, but never saw her work site. The only information about claimant's job came from her and her counsel. Dr. Noonan knew

equally little about claimant's job. Neither could describe the job duties that led to claimant's ailment, as found by the Full Commission. Their opinions that claimant's injury was cumulative and her job was the cause, were based on hypothetical questions that wrongly portrayed her job duties. *See Smith v. Beasley Enters., Inc.*, 148 N.C. App. 559, 563, 577 S.E.2d 902, 905 (2002).

It appears from the record that there is competent evidence to support the findings of fact and conclusions of law by the Full Commission. It bears repeating that if there is any competent evidence to support the Commission's findings, they are conclusive on appeal, "even [if] there is evidence to support a contrary finding of fact." *Morrison v. Burlington Industries*, 304 N.C. 1, 6, 282 S.E.2d 458, 463 (1981). While there may be evidence to support a contrary finding, our standard of review does not allow this Court to substitute its judgment for that of the Commission.

We have reviewed claimant's other arguments, and if they have not been answered in the above discussion, they are wholly without merit. Thus, the opinion and award of the Full Commission is

Affirmed.

Judges McGEE and CALABRIA concur.

Report per Rule 30(e).