

. Affirmed
Chair, Balch
Concurring
Sellers
Scott

NO. COA00-344

NORTH CAROLINA COURT OF APPEALS

Filed: 20 February 2001

FILED
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IN THE OFFICE OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

WILLIAM H. SYKES,

Employee-Plaintiff,

v.

Industrial Commission
I.C. File No. 106105

MOSS TRUCKING COMPANY, INC.,

Employer-Defendant,

and

PROTECTIVE INSURANCE COMPANY,
INC.,

Carrier-Defendant.

Appeal by plaintiff from opinion and award entered 1 October 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 January 2001.

William H. Sykes, pro se, for plaintiff-appellant.

Morris, York, Williams, Surles & Barringer, L.L.P., by Martha W. Surles and Mark D. Gustafson, for defendant-appellees.

MARTIN, Judge

Plaintiff William H. Sykes sustained injuries to his back on 4 October 1990 while working as a long haul truck driver for defendant Moss Trucking Company, Inc. The North Carolina Industrial Commission approved a Form 21 on 11 March 1991, and plaintiff received temporary total disability compensation from 6 November 1990 until 30 November 1998. Plaintiff has been evaluated and treated for his back injury by numerous orthopedists, surgeons,

neurologists, and other medical personnel. The physicians have offered differing opinions as to the degree of plaintiff's disability and his ability to return to work.

In June 1996, plaintiff requested a hearing seeking payment for permanent and total disability. The deputy commissioner's opinion and award, entered on 15 July 1997, designated Dr. Gilbert Snider as plaintiff's treating physician, ordered plaintiff to comply with his medical treatment and vocational rehabilitation, continued plaintiff's payments, and deferred the issue of plaintiff's permanent partial disability. On 6 November 1997, plaintiff moved for reconsideration of the 15 July opinion and award as it pertains to Dr. Snider's designation as his treating physician. The motion was denied by the deputy commissioner on 19 November 1997.

By letter dated 10 December 1997, plaintiff notified the Commission of his intent to appeal to the Full Commission the deputy commissioner's 15 July opinion and award and 19 November order. On 16 January 1998, plaintiff moved for the Commission to approve Dr. Alan Towne as his treating physician. On 6 February 1998, defendants submitted an application to terminate or suspend payments and moved to dismiss plaintiff's appeal of the 15 July opinion and award because it was untimely. By order dated 11 February 1998, the deputy commissioner designated Dr. Robert Hanson as plaintiff's treating physician, continued plaintiff's compensation and directed that plaintiff's "failure to comply with this treatment could result in termination or suspension of

compensation" Plaintiff appealed this decision to the Full Commission by letter dated 14 February 1998. Defendants cross-appealed as to the denial of their motion to terminate or suspend plaintiff's compensation. On 15 May 1998, the Full Commission denied defendants' motion to dismiss plaintiff's appeal.

The Full Commission reviewed the matter on 10 June 1998, examined the records of plaintiff's medical treatment since the filing of the 15 July 1997 opinion and award, and issued an opinion and award on 1 October 1999. The Full Commission concluded that plaintiff failed to use good faith efforts to comply with the treatment instructions of Dr. Hanson and vocational rehabilitation as directed by the Commission, and suspended his benefits until compliance was shown. Plaintiff appeals.

Initially, we note that defendants have argued in their brief to this Court that plaintiff's appeal of the deputy commissioner's 15 July 1997 opinion and award was untimely and that he therefore abandoned his right to have the Full Commission and this Court consider any alleged errors in the opinion and award or the hearing. Defendants' argument is not properly before this Court.

Except as otherwise provided herein, the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10.

N.C.R. App. P. 10(a). The Rule further provides:

A listing of the assignments of error upon which an appeal is predicated shall be stated at the conclusion of the record on appeal, in short form without argument, and shall be

separately numbered.

N.C.R. App. P. 10(c)(1). The record on appeal in this case contains only plaintiff's twenty-eight assignments of error; defendants neither cross-appealed from, nor cross-assigned error to, the Commission's denial of their motion to dismiss plaintiff's appeal. Therefore, their argument is not properly before this Court and we do not consider it. *State v. Hughes*, 136 N.C. App. 92, 524 S.E.2d 63 (1999), *disc. review denied*, 351 N.C. 644, ___ S.E.2d ___ (2000).

Plaintiff's brief contains numerous violations of the Rules of Appellate Procedure. Rule 10 requires that "[e]ach assignment of error shall . . . state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C.R. App. P. 10(c)(1). Rule 28 provides that the function of the briefs "is to define clearly the questions presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon." N.C.R. App. P. 28(a). Plaintiff has failed to present his questions in a clear, concise and non-argumentative fashion, and has failed to provide this Court with any legal basis for his arguments. "These Rules are mandatory, and their violation subjects an appeal to dismissal." *Talley v. Talley*, 133 N.C. App. 87, 89, 513 S.E.2d 838, 839, *disc. review denied*, 350 N.C. 599, 537 S.E.2d 495 (1999). Nevertheless, we will consider the merits of plaintiff's assignments of error in the exercise of the discretion granted us by Rule 2 of the Rules of Appellate Procedure.

Plaintiff assigns error to several of the Commission's findings of fact and conclusions of law. At the heart of his assignments of error, plaintiff challenges the Full Commission's reliance on the medical opinions of some physicians in lieu of the opinions of others. Our review of an opinion and award of the Industrial Commission, however, is limited to whether there is any competent evidence to support the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law. *Adams v. Kelly Springfield Tire Co.*, 123 N.C. App. 681, 474 S.E.2d 793 (1996). If there is any competent evidence to support the finding of fact, we must affirm that finding; this is regardless of whether there is evidence to the contrary. *Id.*

From our thorough review of the record, we hold that there is competent evidence to support each of the Commission's findings of fact contained in the Commission's 1 October 1999 opinion and award, that the conclusions of law drawn by the Commission are supported by its findings of fact, and that such legal conclusions support the Commission's opinion and award. The opinion and award is, therefore, affirmed.

Affirmed.

Judges TIMMONS-GOODSON and THOMAS concur.

Report per Rule 30(e).