IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-476

Filed: 6 December 2016

North Carolina Industrial Commission, I.C. No. 14-706512

MELISSA LENNON, Employee, Plaintiff,

v.

N.C. JUDICIAL DEPARTMENT, N.C. ADMINISTRATIVE OFFICE OF THE COURTS, HARNETT COUNTY CLERK OF SUPERIOR COURT Employer, SELF-INSURED (CORVEL CORPORATOIN, Third-Party Administrator), Defendant.

Appeal by Plaintiff from an opinion and award entered 12 February 2016 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 19 October 2016.

Law Offices of James Scott Farrin, by Douglas E. Berger and Susan J. Vanderweert, for Plaintiff-Appellant.

Attorney General Roy Cooper, by Special Deputy Attorney General Sharon Patrick-Wilson, for Defendant-Appellees.

INMAN, Judge.

The Industrial Commission did not err in denying an employee's workers' compensation claim for injuries sustained at her employer's annual holiday party because the injury did not arise out of and in the course of her employment.

Melissa Lennon ("Plaintiff") appeals from an opinion and award of the Full Commission of the North Carolina Industrial Commission (the "Commission")

denying her claim for additional compensation for days missed from work, permanent partial disability, and medical expenses following an injury she suffered after slipping and falling at a holiday party. Plaintiff contends the Commission erred by concluding her accident did not arise out of and in the course of her employment. After careful review, we disagree and affirm the Commission's award.

I. Factual and Procedural History

Plaintiff worked as a Deputy Clerk of Court in the Accounting Division of the Harnett County Clerk of Court's Office ("Defendant"). In 2013, Plaintiff's division was tasked with planning the annual office holiday party at the Chicora Country Club in Dunn, North Carolina. During her normal work hours and for which she was paid, Plaintiff helped design the invitations and assisted with securing catering and planning the program. She also volunteered to serve as the "emcee" for the event. All employees were invited to attend. Regardless of whether they attended, all employees were expected to contribute $13 to pay for a gift to the Clerk of Court and for cleaning up after the party. A group of private attorneys and their spouses sponsored the party by paying for the cost of renting the venue and the food served to the guests.

On the night of the party, as Plaintiff was entering the Country Club, she tripped and fell and suffered an acute nondisplaced fracture of the distal radius of her left wrist, coccyx fracture, and superior glenoid tear of her left shoulder.

Following the accident, Plaintiff received short-term disability benefits. Plaintiff then filed a claim with Defendant for additional compensation including for days missed from work, permanent partial disability, and medical expenses. Defendant's insurance carrier denied her claim and Plaintiff requested a hearing before the Commission. Following a hearing, a Deputy Commissioner denied the claim, agreeing with Defendant's assertion that Plaintiff was not injured within the course and scope of her employment. Plaintiff appealed to the Full Commission, which also denied her claim. Plaintiff timely appealed.

II. Analysis

A. Standard of Review

> The standard of review in workers' compensation cases has been firmly established by the General Assembly and by numerous decisions of this Court. . . . Under the Workers' Compensation Act, "[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony." . . . Therefore, on appeal from an award of the Industrial Commission, review is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law. . . . This "court's duty goes no further than to determine whether the record contains any evidence tending to support the finding."

Richardson v. Maxim Healthcare/Allegis Grp., 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citations omitted). On appeal, unchallenged findings of fact "are presumed to be supported by competent evidence and are, thus conclusively

established . . . ." *Chaisson v. Simpson*, 195 N.C. App. 463, 470, 673 S.E.2d 149, 156 (2009) (internal quotation marks and citation omitted). However, "[t]he Commission's conclusions of law are reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004) (citation omitted).

"Whether an accident arose out of the employment is a mixed question of law and fact." *Frost v. Salter Path Fire & Rescue*, 361 N.C. 181, 184, 639 S.E.2d 429, 432 (2007) (citation omitted).

B. Arising Out of Requirement

The North Carolina Workers' Compensation Act, N.C. Gen. Stat. § 97 *et seq.*, was enacted to provide "swift and certain compensation" for employees injured on the job and to limit the liability for employers. *Hendrix v. Linn-Corriher Corp.*, 317 N.C. 179, 190, 345 S.E.2d 374, 381 (1986). The Act provides compensation for "injury by accident arising out of and in the course of the employment . . . ." N.C. Gen. Stat. § 97-2(6) (2015). This limiting language, *i.e.*, the requirement an injury arise out of and in the course of employment, "has kept the Act within the limits of its intended scope,—that of providing compensation benefits for industrial injuries, rather than branching out into the field of general health insurance benefits." *Ducan v. City of Charlotte*, 234 N.C. 86, 91, 66 S.E.2d 22, 25 (1951).

"An injury is said to arise 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 that there is some causal relation between the accident and the performance of some service of the employment." *Frost*, 361 N.C. at 185, 639 S.E.2d at 432 (internal quotation marks and citations omitted). It is well established in North Carolina that injuries occurring during recreational and social activities related to employment may fall within the purview of the Act. *Id.* at 185, 639 S.E.2d at 433. Such injuries are compensable in three scenarios, when

> (a) [t]hey occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> (b) [t]he employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (c) [t]he employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee's health and morale that is common to all kinds of recreation and social life.

Perry v. Am. Bakeries Co., 262 N.C. 272, 275, 136 S.E.2d 643, 646 (1964). In *Perry*, the North Carolina Supreme Court held that while the plaintiff's injury arose out of a recreational activity provided by the employer, the employer did not require attendance, and therefore, the plaintiff's injury did not arise out his employment. *Id.*

This Court, consistent with *Perry*, has articulated a six question analysis to aid in the determination of whether an injury arises out of employment:

> (1) Did the employer in fact sponsor the event?

> (2) To what extent was attendance really voluntary?
>
> (3) Was there some degree of encouragement to attend evidenced by such factors as:
>
> a. taking a record of attendance;
>
> b. paying for the time spent;
>
> c. requiring the employee to work if he did not attend; or
>
> d. maintaining a known custom of attending?
>
> (4) Did the employer finance the occasion to a substantial extent?
>
> (5) Did the employees regard it as an employment benefit to which they were entitled as of right?
>
> (6) Did the employer benefit from the event, not merely in a vague way through better morale or good will, but through such tangible advantages as having an opportunity to make speeches and awards?

Chilton v. Bowman Gray Sch. Of Med., 45 N.C. App. 13, 15, 262 S.E.2d 347, 348 (1980) (citation omitted). The North Carolina Supreme Court has noted that these factors, while not controlling, "serve as helpful guideposts" when determining whether an injury incurred by an employee at a social event arose out of his or her employment. *Frost*, 361 N.C. at 187, 639 S.E.2d 434.

In *Chilton*, a medical professor broke his ankle while at a picnic organized by the medical school to introduce the incoming residents to the faculty. *Chilton*, 45 N.C. App. at 13-14, 262 S.E.2d at 347-48. This Court concluded his injury did not

arise from the course of his employment because (1) the record was unclear as to whether his employer sponsored the event; (2) attendance was voluntary, despite faculty members' feeling that they should attend; (3) the participants were not paid for their time spent at the picnic; (4) the picnic was not an event regarded by employees as a benefit to which they were entitled as a matter of right; and (5) the picnic was not utilized by his employer as an opportunity to give speeches or awards. *Id.* at 17-18, 262 S.E.2d at 350.

Plaintiff argues that this case is distinguishable from *Perry* and *Chilton* and is controlled by this Court's decision in *Holliday v. Tropical Nut & Fruit Co.*, which upheld a compensation award to an employee who tore his meniscus while playing laser tag at a work related conference. __ N.C. App. __, __, 775 S.E.2d 885, 888 (2015). Addressing the *Perry* and *Chilton* factors, this Court affirmed the Commission's conclusion that the injury arose in the course and scope of employment, reasoning that

> because Tropical (1) specifically required its employees to attend the event; (2) encouraged their participation in the laser tag activity; and (3) derived a business benefit from the Conference as a whole (of which the outing to Sports Connection was an "essential part") and from the team-building and networking opportunities generated thereby, we believe this case is distinguishable from the facts and circumstances presented in *Frost*, *Perry*, *Berry*, *Graven*, *Chilton*, and *Foster*.

Id. at __, 775 S.E.2d at 895-96.

C. The Commission's Findings of Fact

Our analysis must begin with the facts in this case. The Commission made the following findings:

> 3. The Office of Clerk of Superior Court for Harnett County has had an annual Christmas party for over twenty years. Each division within the Clerk's Office rotated annually the responsibility to serve as the host and to plan the event. The division assigned to host the event was responsible for selecting a caterer, maintaining an RSVP list of attendees, collecting money for gifts provided for the maintenance employees and for the Clerk of Superior Court and collecting money to cover the after party cleaning fee.
>
> 4. In late 2013, employees of the Clerk's Office voted to have a party similar to those that they had held in previous years. The Accounting Division was responsible for hosting the holiday party that year. Plaintiff worked with Assistant Clerk Cheryl Brown, Plaintiff's supervisor, in designing the party invitations, arranging the catering and planning the program for the event. Plaintiff volunteered to emcee the event as well.
>
> . . .
>
> 7. On December 5, 2013, the Clerk's office held its annual Christmas Party at the Chicora Country Club. The Country Club was in another city approximately fifteen to twenty minutes away from the Clerk's Office. The Christmas party was held in the evening after work. The use of the Country Club was sponsored by a group of private attorneys and their spouses. The same private firm paid for Defendant's employees' dinners served during the Christmas party. Employees bringing guests paid an additional $13.00 per guest.
>
> 8. The money collected from employees for the Christmas party was used to purchase gifts for the maintenance staff.

> Employees also donated small gifts that were given away at the Christmas party as door prizes. In lieu of a personal gift to their supervisor, Marsha Johnson, the employees of the Clerk's Office made a donation on behalf of Ms. Johnson to one of her favorite charities. Her staff presented her with a certificate to represent the donation to the charity.
>
> 9. Ms. Johnson spoke at the Christmas party thanking her employees for their hard work and team effort. Ms. Johnson gave gifts of wooden writing pens to all of her employees as a token of appreciation for their work. No service awards were presented to employees.
>
> . . .
>
> 20. The Full Commission finds that Plaintiff was not required to attend the Christmas party as part of her employment. Plaintiff's attendance at the Christmas party was purely voluntary, evidenced by the fact that the employees who did not attend were not subject to any discipline for their failure to attend.
>
> 21. The Full Commission finds as fact that while Plaintiff was attending the Christmas party, she was doing so for her own benefit. Although Plaintiff testified that she felt obligated to attend the party, there is no evidence that she was in the course and scope of employment at the time of the injury.
>
> . . .
>
> 25. Defendant did not sponsor, fund or mandate participation in the Christmas party.

At oral argument, Plaintiff's counsel confirmed that she challenges only one finding of fact: The Commission's finding that Plaintiff's attendance at the party was

not required. Plaintiff asserts this finding is contrary to two other findings by the Commission, and is unsupported by competent evidence. We disagree.

Plaintiff argues that the Commission's finding that Plaintiff's division of the Clerk's Office "was responsible for hosting the holiday party" precluded a finding that Plaintiff's attendance was not required at the party. But Plaintiff overlooks the Commission's description of the hosting duties: "selecting a caterer, maintaining an RSVP list of attendees, collecting money for gifts provided for the maintenance employees and for the Clerk of Superior Court and collecting money to cover the after party cleaning fee." The Commission did not find that hosting duties included attending the party. Rather, the Commission found that Plaintiff volunteered to emcee the event, the only activity which necessitated her attendance.

The record contains competent evidence in the form of witness testimony for which the Commission made specific findings of fact. These findings include testimony by Plaintiff and her co-workers, Cheryl Brown, Daniel McNeil, Janice Pemberton, and Beverly Denning that attendance at the party was not required. The Commission's findings are as follows:

> 16. Cheryl Brown had missed a few of the Christmas parties during her twenty-five years in the Clerk's Office. She was not reprimanded for failing to attend. Ms. Brown, as Plaintiff's supervisor, did not direct Plaintiff to attend the Christmas party.
>
> 17. Daniel McNeil, an Assistant Clerk for seven and half years, has attended every party during his employment

> except for one, when he was sick. He described the event as one that employees look forward to attending. Mr. McNeil disagreed with Plaintiff that an employee needed a good reason for failing to attend the event. He stated there were no repercussions for not attending.
>
> 18. Janice Pemberton serves as a Deputy Clerk in the Civil Division. She began employment with Defendant in 2012. Ms. Pemberton testified she attended the party because it was fun, but attendance was not a requirement of employment. The protocol was to collect monetary gifts for the maintenance staff and Ms. Johnson on behalf of the employees. Prior to her employment with Defendant, Ms. Pemberton attended the party as a guest.
>
> 19. Beverly Denning, a Deputy Clerk, has worked for Defendant the past eight years. She testified it was customary for the employees to pay the fee, even if they were unable to attend the event. Ms. Denning has missed some of the annual events, but was not reprimanded for her absences.

These findings are unchallenged and thus binding on appeal. *See Chaisson*, 195 N.C. App. at 470, 673 S.E.2d at 156. They support the Commission's Finding of Fact 20 that Plaintiff was not required to attend the party. We hold the record contains competent evidence to support the Commission's Finding of Fact 20.

Plaintiff asserts that additional evidence supports her argument that she was required to attend upon volunteering for the "emcee" position. However, "[t]he findings of fact of the Industrial Commission are conclusive on appeal when supported by competent evidence, even though there be evidence that would support findings to the contrary." *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d

632, 633 (1965). Accordingly, we must take as fact those findings supported by competent evidence, *i.e.*, Plaintiff's attendance was not required.

C. Application of Law

Plaintiff next contends the Commission erred in relying on the *Chilton* factors as opposed to the *Perry* test in concluding her injury did not arise out of and in the course of her employment. We disagree.

Perry authorizes a finding of compensability in only three scenarios: an injury on the work premises; an injury during an activity from which the employer derives a substantial benefit beyond improving employee morale; and an injury during an activity which "[t]he employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of employment[.]" *Perry*, 262 N.C. at 275, 136 S.E.2d at 646. Because, as explained *supra*, we hold that the Commission's finding that Plaintiff's attendance was not required was supported by competent evidence, Plaintiff's injury does not fall within any of the three *Perry* scenarios. Having exhausted *Perry* as precedent for deciding Plaintiff's claim, the Commission properly considered the *Chilton* factors for further guidance.

After careful review of the record, we hold the Commission did not err in concluding Plaintiff's injury did not arise out of or in the course of her employment. The Commission determined that the evidence did not sufficiently answer the

questions set forth in *Chilton*—1) the party was not sponsored by Defendant; 2) attendance was not required; 3) no degree of encouragement existed; 4) Defendant did not finance the occasion; 5) the employees did not regard the event as a benefit or entitlement; and 6) the event did not provide Defendant with a benefit except for improving employee morale. While Plaintiff asserts there is evidence in the record to support her arguments to the contrary concerning the facts, it is not within our review to reweigh the evidence. As discussed above, the competent evidence supports the Commission's conclusion that Plaintiff's injury did not arise out of and in the course of her employment. Accordingly we affirm the Commission's denial of Plaintiff's claims.

D. Plaintiff's Additional Assignments of Error

Plaintiff argues the Commission further erred by not finding and concluding her injuries were causally related to her accident and that Plaintiff was not entitled to temporary total disability benefits. Because we affirm the Commission's conclusion that Plaintiff's injury did not arise out of and in the course of her employment, the Commission was under no duty to make findings regarding the causal connection and we need not address these issues on appeal.

III. Conclusion

For the above stated reasons, we affirm the Commission's opinion and award denying Plaintiff's claim.

AFFIRMED.

Judges DAVIS and ENOCHS concur.

Report per Rule 30(e).