An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA04-910

NORTH CAROLINA COURT OF APPEALS

Filed: 7 June 2005

KATHRYN P. COOK,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 149303

LOGGERHEAD, INC.,
Employer-Defendant,

and

HARBOR SPECIALTY INSURANCE COMPANY,
Carrier-Defendant,

and

INTERSTATE INSURANCE SERVICE GROUP,
Third Party Administrator-Defendant.

Appeal by Defendant from Opinion and Award entered 13 April 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 April 2005.

Brannon & Strickland, PLLC, by Anthony M. Brannon, for plaintiff-appellee.

Teague, Campbell, Dennis & Gorham, L.L.P., by Mallory T. Underwood and Season D. Atkinson, for defendant-appellant.

WYNN, Judge.

The Industrial Commission's findings of fact "are conclusive on appeal when supported by competent evidence," even if there is evidence to support a contrary finding. *Morrison v. Burlington Indus.*, 304 N.C. 1, 6, 282 S.E.2d 458, 463 (1981). Here, Employer-Defendant Loggerhead, Inc. argues that the full Commission's findings of fact supporting the conclusion of law that Ms. Cook sustained a compensable injury by accident, are not supported by competent evidence. Because the record shows competent evidence supported the findings of fact, we affirm the Opinion and Award.

The record on appeal shows that at the time of the hearing, Plaintiff Kathryn Cook was forty-six years old and had obtained a GED. She began working as manager of Loggerhead Inn for Defendant Loggerhead, Inc. on 15 March 2001.

Ms. Cook had a history of intermittent back pain and had previously been treated by a chiropractor. In July and August 2000, Ms. Cook received a series of epidural injections to her back from a family medicine physician.

The findings of fact indicate that on or about 11 April 2001, Ms. Cook went to a hotel room to prepare the room for guests. She noticed that the bed had been moved out of place. According to Ms. Cook, when she attempted to move the bed, "it didn't move and I pulled it again and . . . felt, like, a sting in my back."

Ms. Cook reported the incident to one of the owners, Bud Wamsley, three or four days after the incident upon his return from Virginia. Ms. Cook continued to work during this time. Ms. Cook then went to Dr. William Mead, a chiropractor, for treatment for pain in her lower back radiating to her right leg. Ms. Cook was seen by a number of doctors for pain management and underwent back surgery on 17 December 2002.

On 22 June 2001, Ms. Cook filed a Form 18 Notice of Accident to Employer with the Industrial Commission alleging that the pulling incident caused her back injury. Loggerhead denied this claim.

Ms. Cook requested a hearing. In an Opinion and Award filed 2 June 2003, Deputy Commissioner W. Bain Jones, Jr. awarded Ms. Cook temporary total disability compensation from 24 May 2001 until further order and medical expenses. In an Opinion and Award filed 13 April 2004, the full Commission affirmed the decision and award by Deputy Commissioner Jones. Loggerhead appealed.

On appeal, Loggerhead argues that the competent and credible evidence fails to support the full Commission's findings of fact and conclusions of law that Ms. Cook sustained a compensable injury by accident. We disagree.

The standard of review for this Court in reviewing an appeal from the full Commission is limited to determining "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). Our review "'goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (citation omitted). The full Commission's findings of fact "are conclusive on appeal when supported by competent evidence," even if there is evidence to support a contrary finding, *Morrison v. Burlington Indus.*, 304 N.C. 1, 6, 282 S.E.2d 458, 463 (1981), and may be set aside on appeal only "when there is a complete lack of competent evidence to support them[.]" *Young v. Hickory Bus. Furniture*, 353 N.C. 227, 230, 538 S.E.2d 912, 914 (2000) (citation omitted). It is not the

job of this Court to re-weigh the evidence. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414. Further, all evidence must be taken in the light most favorable to the plaintiff, and the plaintiff "is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Deese*, 352 N.C. at 115, 530 S.E.2d at 553.

Loggerhead argues in its brief that the full Commission erred in disregarding the factual discrepancies between Ms. Cook's testimony and that of other witnesses. Determining credibility of witnesses is the responsibility of the full Commission, not this Court. *Adams*, 349 N.C. at 681, 509 S.E.2d at 413. This Court does not re-weigh the evidence. *Id*. We find this argument to be without merit.

Loggerhead next argues that the full Commission erred in disregarding medical evidence that established that Ms. Cook had a pre-existing degenerative back condition and the competent medical evidence did not support the findings of fact and conclusions of law. We disagree.

Loggerhead contests the following pertinent Findings of Fact:

> 5. . . . In addition, plaintiff had sought treatment, including epidural steroid injections, from Dr. Shyam Garg, a family medicine physician, in July 2000 and on March 22, 2001 complaining of low back pain radiating into the left leg. Plaintiff had recovered from back pain at the time of her alleged injury. The severity of her back pain after the alleged injury was much greater than before.
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> ***
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> 25. Dr. Miller's testimony established a causal relationship between plaintiff's work-related injury when moving the bed and the back pain and right leg pain she has experienced as a result of the annular tear at L4-5 and the bulge at L5-S1.
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> ***

The record on appeal indicates competent medical evidence supported the finding of fact that there was a causal relationship between the work-related injury and the back and right leg pain. Dr. Jon Miller, M.D., a specialist in spine surgery, testified as follows:

> Q. Do you have an opinion to a reasonable degree of medical certainty whether it's more likely than not that the incident that she described to you occurring on 3/20/01, when she was pulling on a bed, caused her current back problems?
>
> A. I do.
>
> Q. What is your opinion?
>
> A. Well, my opinion is that it was.

Additionally, Dr. John Hunter Knab, M.D., a specialist in anesthesiology and pain management, testified that "[Ms. Cook] was not having pain or dysfunction prior to the episode where she moved the bed, and experienced that pain -- and now -- dysfunction ever since that injury. So, I think that the two are temporally related." Dr. Rufus H. Warren, M.D., a family practice physician, testified that, in his opinion, Ms. Cook aggravated a pre-existing condition. There is competent medical evidence to support finding of fact twenty-five that the incident and the injury were causally related. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414. The full Commission's findings of fact are conclusive even if there is evidence to support contrary findings. *Morrison*, 304 N.C. at 6, 282 S.E.2d at 463.

Additionally, Ms. Cook testified that although she previously had back pain, it was intermittent and not at the level of severity it was after the injury. Ms. Cook's medical records also showed no doctor's visits for back pain for seven to eight months prior to the injury. This is competent evidence to support finding of fact five. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414.

As there is competent evidence to support the findings of fact, and the findings of fact support the conclusions of law, we affirm the Opinion and Award of the full Commission. *Deese*, 352 N.C. at 116, 530 S.E.2d at 553.

Loggerhead assigns error to several other findings of fact but fails to argue them in its brief, therefore, they are deemed abandoned. N.C. R. App. P. 28(b)(6).

Affirmed.

Judges BRYANT and JACKSON concur.

Report per Rule 30(e).