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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-809

Filed: 16 July 2019

North Carolina Industrial Commission, I.C. NO. 16-707463

DAVID HOLLAND, Employee, Plaintiff

v.

PARRISH TIRE COMPANY, Employer, ACCIDENT FUND INSURANCE CO.,
Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 23 April 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 12 February 2019.

Deuterman Law Group, P.A., Casey Francis and Jack P. Waissen for plaintiff-appellant.

McAngus, Goudelock & Courie, P.L.L.C., by Laura Carter, for defendant-appellee.

BRYANT, Judge.

Where the Full Industrial Commission failed to make findings of fact addressing the cause of plaintiff's aortic dissection as discussed by physicians admitted as medical experts, we reverse the Commission's opinion and award and remand for further findings of fact.

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Plaintiff David Holland began working for defendant-employer Parrish Tire Company as a truck driver in 2009. Plaintiff's job duties included loading and unloading tires onto an eighteen wheel tractor trailer and delivering those tires to clients. For transport, tires weighing between 100 and 200 pounds each were "barrel stacked" in columns up to eight feet in height. When delivering tires to clients, plaintiff would normally unload the tires himself—pulling each tire down from the top of the barrel stack and rolling it off of the truck trailer. Usually, plaintiff made four to twelve deliveries a day.

On 17 September 2015, defendant was making a delivery to Tire Sales and Services in Fayetteville. He began to unload tractor tires with the help of Jimmy Crumpler, the owner of Tire Sales and Services. Plaintiff unloaded the tires from the barrel stack and then rolled them to Crumpler, who stacked them against a wall. Plaintiff alleged that he reached up and grabbed a tire from the stack, and as it came down, it hit him in the chest, fell to the floor, bounced up, and struck him in the chest again. Shortly thereafter, plaintiff became uncharacteristically slow and began to turn grey. Crumpler asked if plaintiff was okay. "I don't feel right, something is not right," plaintiff responded. Crumpler directed plaintiff to get off the trailer, go to Crumpler's office, and get some water. Soon, Crumpler transported plaintiff to Express Care, an urgent care center.

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On the way to Express Care, plaintiff contacted defendant and reported that he “wasn’t feeling very well” and was on his way to the hospital. At Express Care, plaintiff was examined by Dr. Richard Ferro. Plaintiff reported complaints of shortness of breath and sweating while unloading tires at work. Dr. Ferro called 9-1-1 for an EMS transport to the emergency room at Cape Fear Valley Medical Center. At Cape Fear Valley Medical Center, plaintiff reported that he experienced shortness of breath and got very tired that morning while rolling tires at work. A 2D echocardiogram revealed moderate pericardial effusion and a possible proximal aortic dissection with moderate aortic regurgitation. Dr. Robert Maughan, a cardiac surgeon at Cape Fear Valley Medical Center, reviewed plaintiff’s echocardiogram, evaluated him, and diagnosed plaintiff with having suffered an aortic dissection.

Plaintiff was then admitted to the cardiac ICU as suffering from a Type A ascending aortic dissection and a collapsed lung. The following day, 18 September 2015, Dr. Maughan “performed an emergent repair of Plaintiff’s Type A Aortic Dissection with Bentall procedure and repair of the ascending aorta.” On 4 October, a chest tube was inserted to address the collapsed left lung, but the lung was unable to be inflated. Plaintiff was discharged from the hospital on 9 October 2015 with instructions to follow-up with his primary care physician within four days and with cardiology in two weeks.

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Plaintiff had weekly or bi-weekly medical follow-up visits from 13 October 2015 through 2017. On 18 November 2015, Dr. Maughan notified plaintiff that due to the Type A aortic dissection, plaintiff would not be able to lift more than 40 pounds, indefinitely. On 27 January 2016, Dr. Joseph Rabinowitz, at Chair Family Practice, noted that “it is my medical opinion that Plaintiff is permanently disabled as of 9/17/15 and can no longer work.” Defendant terminated plaintiff from employment in February 2016.

On 1 March 2016, plaintiff recorded a statement to defendant in which he described what took place during his delivery on 17 September 2015:

Well, I just got up that morning, um, drove the truck to my very first stop, backed my truck up to the area where we unload. I started unloading tires, I started getting very tired, and people that was [sic] around me noticed my skin changing colors and told me to come off the truck. The owner then me . . . the owner of the company I was delivering told me I looked like crap and I needed to go see somebody about it.

On 3 March 2016, defendants filed a Form 61 Denial of Workers’ Compensation Claim.

On 3 May 2016, plaintiff filed a Form 18 Notice of Accident to Employer and Claim of Employee in which he alleged that on 17 September 2015, “[e]mployee suffered a compensable injury as he was unstacking tires to unload his rig in unusual heat and exertion when he had an aortic valve dissection” Meanwhile, on 10 June 2016, plaintiff had a neurological evaluation based upon complaints of memory

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loss and difficulty concentrating. He was diagnosed with major neurocognitive disorder due to traumatic brain injury during his open-heart surgery, adjustment disorder, and depression related to traumatic injury.

On 16 June 2016, plaintiff filed a Form 33 Request that Claim be Assigned for Hearing. On 9 November 2016, the matter was heard before Deputy Commissioner Lori A. Gaines. During the hearing, plaintiff was questioned about discrepancies in various reports regarding the 17 September 2015 incident. He responded that he sustained long-term memory loss as a result of his aortic dissection. Plaintiff testified that he did not recall whether on 17 and 18 September 2015, he told EMS or hospital staff that a tire struck him in the chest. Tire strikes happened to him frequently, and he did not feel the information was important, given his symptoms. Crumpler also testified that he had been struck many times by a falling tire; it was an everyday occurrence when unloading tires off of a tractor trailer.

Deputy Commissioner Gaines entered her opinion and award on 21 July 2017 in which she concluded that plaintiff had suffered a compensable injury by accident “in which Plaintiff was hit in the chest by a large tire.” The Deputy Commissioner awarded plaintiff temporary total disability and directed defendant to pay for plaintiff’s medical treatment “necessitated by the compensable accident that took place on September 17, 2015.” Defendant appealed to the Full Commission (hereinafter “the Commission”). Prior to the Commission’s full review, the

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Commission ordered medical deposition testimony. The parties took the deposition testimony of Dr. J. Richard Daw, Dr. James Shearer, Dr. Oluseun Alli, Dr. Robert Maughan, and Dr. Richard Ferro. These depositions were received into evidence.

The Commission reviewed the matter on 19 December 2017 and entered an opinion and award on 23 April 2018. The Commission found

[p]laintiff's testimony[,] that while unloading tires at his delivery stop on September 17, 2015 a tire fell and struck him in the chest . . . and he immediately felt tired, exhausted, and drowsy[,] not credible as Plaintiff's testimony [wa]s inconsistent and conflicting with his initial statements and reports . . . and not supported by the competent evidence of record.

The Commission concluded that plaintiff failed to meet his burden of proving by a preponderance of the evidence that he sustained a compensable injury by accident or specific traumatic incident as a result of the work assigned, arising out of and in the course of his employment with defendant on 17 September 2015. The Commission concluded that plaintiff's claim was not compensable and denied plaintiff's claim. Plaintiff appeals.

On appeal, plaintiff questions whether the Commission erred by (I) failing to consider medical testimony; (II) making findings of fact not supported by competent evidence; (III) finding that plaintiff's testimony was not credible; (IV) making

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conclusions of law not supported by findings of fact; and (V) making an award not supported by findings of fact and conclusions of law.

Standard of Review

“The North Carolina Supreme Court has clearly stated that ‘appellate courts reviewing Commission decisions are limited to reviewing whether any competent evidence supports the Commission’s findings of fact and whether the findings of fact support the Commission’s conclusions of law.’ ” *Bishop v. Ingles MKTS, Inc.*, 233 N.C. App. 431, 434, 756 S.E.2d 115, 118 (2014) (quoting *Deese v. Champion Int’l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000)). “This [C]ourt’s duty goes no further than to determine whether the record contains any evidence tending to support the finding. We review the Full Commission’s conclusions of law *de novo*. Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Lowe v. Branson Auto.*, 240 N.C. App. 523, 526, 771 S.E.2d 911, 914 (2015) (citations omitted).

Because we hold the Commission committed reversible error as to plaintiff’s Issue I, subjecting this case to remand, we address only Issue I.

Failure to Consider Medical Testimony

Plaintiff argues that the trial court committed reversible error by failing to consider expert medical testimony from five physicians, making findings of fact only from plaintiff’s medical records. More specifically, plaintiff contends the Commission

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erred by failing to make findings of fact regarding the testimonies of five physicians who excluded potential causes for plaintiff's aortic dissection. We agree in part.

In his brief, plaintiff sets out three arguments: 1) the testimony of treating physicians must be considered (citing *Gutierrez v. GDX Auto.*, 169 N.C. App. 173, 176, 609 S.E.2d 445, 448 (2005)); 2) a finding must be entered regarding a doctor's testimony (citing *id.* at 177, 609 S.E.2d at 448); and 3) testimony relevant to an "exact point in controversy" must be considered (citing *Jenkins v. Easco Aluminum Corp.*, 142 N.C. App. 71, 78–79, 541 S.E.2d 510, 515 (2001)).

We note the Commission received into evidence deposition testimony from several physicians, who either treated plaintiff or reviewed his medical reports.¹ The deposition testimonies described an aortic dissection and set forth some common causes. The physicians also discounted the applicability of some common causes. "[A]ortic dissection is a tear in the aorta" Dr. Alli, a consulting cardiologist, testified generally about aortic dissections: it is not a common problem. Approximately, 2 to 2.5 people suffer an aortic dissection per 100,000. Hypertension is the most common cause but other known causes include aortic aneurysm, trauma, infection, inflammation, and genetic predisposition. Dr. Alli reviewed plaintiff's medical records but provided no treatment.

¹ Dr. Ferro first examined plaintiff and had him rushed to the emergency room at Cape Fear Valley Medical Center. He made no diagnosis relative to an aortic dissection. Dr. Shearer, a diagnostic radiologist, examined x-rays of plaintiff's chest.

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Dr. Maughan, the cardiac surgeon who repaired plaintiff's aortic dissection, did not know the cause of plaintiff's aortic dissection.

Q. Okay. Does your practice typically get involved in the causation behind the diagnosis or do you really just treat?

A. In a situation like his where he requires kind of emergent surgery, it's -- the main focus is on fixing it.

Q. And on saving his life?

A. Correct.

However, Dr. Maughan did testify there was no indication plaintiff's aortic dissection was the result of an inflammatory body process or an infectious process. In fact, all the relevant medical testimony did not support the most common causes of this most uncommon problem: hypertension, aneurysm, infection, inflammation, and genetics. But medical opinion testimony indicated an aortic dissection could be caused by trauma.

In response to the proposition that plaintiff was struck in the chest by a tire on the day he suffered chest pain, Dr. Daw, one of plaintiff's treating cardiologists, agreed that the "tire blow on September 17th, 2015, [would] cause, aggravate, or in [some] way contribute to the aortic dissection for which [plaintiff] was subsequently treated[.]"

Q And what is the basis of your opinion?

A Because I have no other data -- well, so there's two parts.

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One is, if he was struck in the chest by the tire, it doesn't really matter if he has a secondary process going on like unrecognized hypertension or aortic insufficiency. He got acutely ill that day, and he has blood in his pericardium, and so I don't think he was walking around for days with this condition, and so that's why there's an association to me of the tire strike and his presentation.

There's data to say if you fall ten feet, you can have a dissection of the aorta from a fall, and so if he has a 200-pound tire falling from seven feet, and the way he described where it hit him, I think there's an association.

Q And is the basis of your opinion the diagnostic tests that you've reviewed for him?

A It's the history and his -- the way he presented. So the EMS picked him up, and his blood pressure was 90, and so -- and it's the acuity of his illness, that he was at work, functioning, and then all of a sudden, they had to call EMS.

Q Okay. And do you also use your experience as a cardiologist to form that opinion?

A Yeah.

Given these medical deposition testimonies, the Commission failed to make findings of fact on the cause of plaintiff's aortic dissection or lack thereof. This was reversible error. "We have repeatedly held [i]t is reversible error for the Commission to fail to consider the testimony or records of a treating physician." *Gutierrez*, 169 N.C. App. at 176, 609 S.E.2d at 448 (alteration in original) (citations omitted). "The Commission erred by failing to enter finding[s] of fact regarding the consideration, credibility, or relevancy of [the medical] deposition testimony." *Id.* at

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177, 609 S.E.2d at 448. Regardless of the fact that the Commission deemed plaintiff's testimony of being hit by a falling tire not credible, the Commission still had a duty to consider and evaluate the medical testimony as to causation. The determination of whether plaintiff sustained an injury during the course of his employment should have taken into account the medical testimony regarding aortic dissections—its possible causes and those that were ruled out. Accordingly, we reverse the Commission's 23 April 2018 opinion and award and remand this matter for further findings of fact.

REVERSED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).