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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-715

No. COA21-123

Filed 21 December 2021

North Carolina Industrial Commission, I.C. No. 17-805002

GUILFORD W. SAMUEL, Employee, Plaintiff,

v.

RC CREATIONS, LLC, d/b/a ACME SMOKED FISH COMPANY, Employer, AMERICAN ZURICH INSURANCE COMPANY, Carrier (GALLAGHER BASSETT SERVICES, INC., Third-Party Administrator), Defendants.

Appeal by plaintiff from opinion and award entered 23 December 2020 by the North Carolina Industrial Commission. Heard in the Court of Appeals 20 October 2021.

*Cardinal Law Partners, by John R. Landry Jr., for plaintiff-appellant.*

*Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones and Dalton B. Green, for defendants-appellees.*

DIETZ, Judge.

¶ 1

Plaintiff Guilford Samuel suffered a compensable workplace injury to his shoulder in 2017. Several months later, Samuel was diagnosed with a more serious shoulder injury and other medical conditions. Defendants challenged Samuel's request for additional workers' compensation benefits for these injuries.

¶ 2 At a hearing before the Commission, Defendants presented expert testimony that Samuel suffered a series of neck, shoulder, and back injuries from motor vehicle accidents before his workplace accident and that his current injuries were unrelated to the workplace injury. The Commission found this testimony credible, concluded Defendants had overcome the applicable presumption of compensability, and denied Samuel further compensation.

¶ 3 As explained below, under the narrow standard of review applicable to the Commission's determination, we must affirm. There was at least some competent evidence supporting the Commission's findings, and those findings, in turn, support the Commission's conclusions of law. We therefore affirm the Commission's opinion and award.

### **Facts and Procedural History**

¶ 4 In February 2014, Guilford Samuel was in a car accident in which his head struck the windshield and he lost consciousness. Medical professionals noted that he reported shoulder pain and weakness. In 2016, Samuel was in a second car accident and again reported pain in his shoulders, neck, chest, and abdomen, particularly his left shoulder. Both times, Samuel received some treatment for his injuries.

¶ 5 In 2017, Samuel began work at Defendant Acme Smoked Fish Company. Before beginning work, he filled out a placement questionnaire indicating that he had never been treated by a physician for shoulder problems.

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¶ 6 In July 2017, Samuel slipped at work while pulling a cart inside a freezer and injured his shoulder. In September 2017, Defendants—his employer and the employer’s insurer—accepted liability for a “left shoulder contusion/strain” resulting from Samuel’s workplace fall.

¶ 7 In November 2017, Dr. John O’Malley, an orthopedist, treated Samuel for his ongoing shoulder pain. Dr. O’Malley diagnosed Samuel with a partial rotator cuff tear of the left shoulder. In later deposition testimony, Dr. O’Malley opined that Samuel’s ongoing shoulder injury likely existed before his workplace accident, and it was unlikely that the accident “materially aggravated” that existing condition.

¶ 8 The Industrial Commission, relying largely on Dr. O’Malley’s testimony, denied Samuel’s request for additional workers’ compensation benefits in an opinion and award. Samuel timely appealed.

**Analysis**

¶ 9 Samuel argues that the Commission erred by concluding that his current medical conditions are unrelated to his workplace injury. On appeal from an opinion and award of the Industrial Commission in a workers’ compensation case, this Court applies a narrow standard of review. We are limited to examining whether the Commission’s “findings of fact are supported by competent evidence,” and whether the Commission’s conclusions of law are “justified by the findings of fact.” *Chambers v. Transit Mgmt.*, 360 N.C. 609, 611, 636 S.E.2d 553, 555 (2006). Under the competent

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evidence standard, this Court must uphold the Commission’s findings of fact if there is *any* competent evidence to support them, “even if there is plenary evidence for contrary findings.” *Hardin v. Motor Panels, Inc.*, 136 N.C. App. 351, 353, 524 S.E.2d 368, 371 (2000).

¶ 10 This case involves an aspect of workers’ compensation law known as the “*Parsons* presumption.” The presumption provides that, when a workers’ compensation claim is proven compensable, the law creates a presumption that any additional medical treatment the employee later undertakes is directly related to the initial, compensable injury. *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 542, 485 S.E.2d 867, 869 (1997). An employer may rebut this presumption with evidence that the additional medical treatment is not directly related to the compensable injury. *Perez v. Am. Airlines/AMR Corp.*, 174 N.C. App. 128, 135–36, 620 S.E.2d 288, 292–93 (2005).

¶ 11 Shortly after Samuel’s workplace injury, Defendants acknowledged that Samuel’s injury was compensable and accepted liability for a “left shoulder contusion/strain.” Defendants did not accept liability for the later, partial rotator cuff tear and other medical conditions at issue in this appeal, with which Samuel had not yet been diagnosed.

¶ 12 At the hearing before the Commission, Defendants presented evidence that Samuel’s partial rotator cuff tear and other medical conditions were unrelated to his

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workplace injury. Defendants' evidence included the expert testimony of Dr. O'Malley, one of Samuel's treating physicians, who concluded that Samuel's ongoing conditions were not related to his workplace accident. Dr. O'Malley based his opinion on several factors including Samuel's previous medical records reporting pre-existing shoulder pain before the workplace injury, Dr. O'Malley's own examination of Samuel, and Samuel's lack of candor about his pre-existing shoulder issues. Based on this information, Dr. O'Malley opined that Samuel's current medical conditions existed before the workplace accident and that it was "unlikely" that Samuel's workplace injury "materially aggravated" those pre-existing conditions.

¶ 13 The Commission found Dr. O'Malley's testimony credible and, based on that "competent credible testimony," further found that Samuel's ongoing medical conditions were "unrelated to the compensable injury." The Commission then concluded, applying the appropriate legal test, that Defendants had overcome the *Parsons* presumption and demonstrated that Samuel's current medical conditions were not compensable.

¶ 14 Applying the narrow standard of review applicable to the Commission's decision, we affirm the Commission's opinion and award. There was at least some competent evidence supporting the Commission's determination and thus, despite Samuel's own counterevidence, we are constrained to accept the Commission's findings. *Hardin*, 136 N.C. App. at 353, 524 S.E.2d at 371. Those findings, in turn,

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support the Commission's conclusion that Defendants rebutted the *Parsons* presumption and proved that Samuel's shoulder injury and accompanying medical conditions were not compensable. *Id.*

**Conclusion**

¶ 15

We affirm the Industrial Commission's opinion and award.

AFFIRMED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).