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NO. COA05-1673

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

TERESA COLLINS,  
Employee,  
Plaintiff-Appellee,

v.

North Carolina Industrial Commission  
I.C. File No. 175332

UNIFI, INC.,  
Employer,

and

PMA INSURANCE COMPANY  
Carrier,  
Defendants-Appellants,

Appeal by plaintiff from opinion and award of the North Carolina Industrial Full Commission entered 10 October 2005 by Commissioner Dianne C. Sellers. Heard in the Court of Appeals 16 August 2006.

*Franklin Smith for plaintiff-appellant.*

*Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by Brian M. Freedman, for defendants-appellees.*

JACKSON, Judge.

Unifi, Inc. (“defendant”) employed Teresa Collins (“plaintiff”) for approximately thirteen years as a machine operator. Specifically, plaintiff’s job duties involved running spools of yarn

through a machine. On 14 January 2001, plaintiff sustained a compensable injury by accident when she struck her left elbow on a take-up bar as she was descending from her machine. Plaintiff reported the accident to her supervisor, but did not seek immediate medical attention.

Three months after the accident, plaintiff sought medical attention from Loretta Matthews, the plant nurse, who referred her to Dr. Susan Yuson, the company doctor. On 27 April 2001, Dr. Yuson examined plaintiff, noted mild swelling of the left elbow, and prescribed an oral steroid. Dr. Yuson did not order plaintiff to refrain from work. On 8 May 2001, plaintiff returned to Dr. Yuson with continuing pain, and Dr. Yuson diagnosed plaintiff with left medial epicondylitis and placed her on light work duty.

Since plaintiff continued to complain of pain in her left elbow, Dr. Yuson and defendant sent plaintiff to Dr. Ethan Weisler, an orthopedic surgeon. On 5 June 2001, X-rays were taken of plaintiff's arm, and Dr. Weisler found that plaintiff's X-rays were normal, that there was no weakness or atrophy in the elbow, and that plaintiff had normal strength. On 23 August 2001, because plaintiff's complaints did not improve, defendant sent plaintiff to Dr. Matthew Weingold, an orthopedic surgeon who specializes in treating hand and upper extremity disorders. Dr. Weingold discovered evidence of mild ulnar neuropathy at the left elbow, and on 17 October 2001, Dr. Weingold operated on plaintiff's left elbow. On 25 October 2001, plaintiff returned to Dr. Weingold, who found plaintiff was in good condition. He released plaintiff to return to modified work with no use of the left arm. On 1 January 2002, Dr. Weingold released plaintiff to return to full work duty without restriction.

On 8 January 2002, plaintiff returned to Dr. Weingold with continuing complaints about generalized pain. He ordered an MRI which did not show any abnormalities and prescribed anti-inflammatory medication. On 25 January 2002, plaintiff presented to Dr. Weingold for the last

time, and Dr. Weingold released her from medical care and assigned a thirty percent permanent partial disability rating to her left arm.

Thereafter, plaintiff returned to work. On 21 March 2002, however, plaintiff complained to her family physician, Dr. John Williams, of pain in her left arm and shoulder. Dr. Williams injected plaintiff's shoulder with a local anaesthetic and a corticosteroid. Plaintiff gave a note from Dr. Williams to the plant nurse recommending plaintiff stay out of work for six weeks, and the plant nurse referred plaintiff back to Dr. Yuson.

On 22 March 2002, plaintiff presented to Dr. Yuson complaining of left shoulder pain. Dr. Yuson diagnosed plaintiff with a left shoulder strain, but did not find that plaintiff's shoulder problems related to plaintiff's job or the compensable left elbow injury. On 27 March 2002, plaintiff returned to Dr. Williams complaining of left shoulder pain. Dr. Williams was unable to diagnose specifically the problem with plaintiff's shoulder and referred plaintiff to an orthopedist.

In March 2003, defendant audited plaintiff's job performance. During the audit, plaintiff met her production goals but refused to use her left arm while working. On 17 April 2003, defendant laid off plaintiff due to economic problems and provided plaintiff with a severance agreement. Plaintiff has not returned to work since 17 April 2003. On 23 April 2003, plaintiff presented to Dr. H. Boyd Watts, an orthopedic surgeon, who ordered nerve conduction studies and referred plaintiff to Dr. Gregg Ferrero for further evaluation. On 28 April 2003, plaintiff presented to Dr. Ferrero who found that plaintiff had full range of motion of her left shoulder, elbows, wrists, and hands. Dr. Ferrero was unable to reconcile plaintiff's complaints, although he thought that some of her symptoms could be due to irritation from the sutures from surgery.

On 13 June 2003, plaintiff filed a motion for additional medical treatment with the Industrial Commission. On 24 June 2003, Special Deputy Commissioner Chrystina F. Kesler denied plaintiff's motion, and plaintiff appealed and requested a hearing. On 10 August 2004, Deputy Commissioner Morgan S. Chapman reviewed this matter and concluded that plaintiff was entitled to compensation for past and future evaluation and treatment for the ongoing left elbow pain. Defendant filed notice of appeal, and, on 19 April 2005, the Full Commission heard defendant's appeal. On 10 October 2005, the Full Commission concluded that plaintiff's shoulder condition was not causally related to her compensable injury that occurred on 14 January 2001. Furthermore, plaintiff failed to show that she had any periods of disability related to her compensable injury, or that she was permanently and totally disabled. The Full Commission concluded that plaintiff was entitled to permanent partial disability compensation for a thirty percent rating to her left elbow and that defendant must pay for medical expenses incurred as a result of the compensable injury. Plaintiff appeals to this Court.

On appeal, plaintiff argues two issues: (1) the Full Commission erred in finding plaintiff's allegation was not acceptable as credible; and (2) the Full Commission erred in finding plaintiff's position was eliminated due to lack of business and finding plaintiff was one of several hundred employees laid off in April 2003 due to economic problems.

It first must be noted that the sole case relied upon by plaintiff has been overruled. Specifically, plaintiff contends that the Full Commission improperly supplanted the deputy commissioner's credibility findings in violation of *Sanders v. Broyhill Furniture Indust.*, 124 N.C. App. 637, 478 S.E.2d 223, (1996). This Court held in *Sanders*,

“Commissioners sitting as the Full Commission should exercise great restraint when tempted to replace the evaluation of a deputy, who was actually present to observe the witnesses who testified under oath, with the opinion of a Commissioner, who has reviewed

only a cold record and the brief arguments of the party or their counsel.”

*Id.* at 640-41, 478 S.E.2d at 226. Two years after the *Sanders* decision, however, our Supreme Court held that “[w]hether the full Commission conducts a hearing or reviews a cold record, [N.C. Gen. Stat.] . 97-85 places the ultimate fact-finding function with the Commission -- *not the hearing officer*. It is the Commission that ultimately determines credibility . . . .” *Adams v. AVX, Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998) (emphasis added). In addition to establishing this standard of review, the *Adams* Court expressly overruled *Sanders*, *id.* at 681, 509 S.E.2d at 414, and we consistently have applied the *Adams* decision. *See, e.g., Perkins v. U.S. Airways*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 628 S.E.2d 402, 406 (2006). Thus, plaintiff’s reliance on *Sanders* in the case *sub judice* is misplaced.

We note further that plaintiff has failed to comply with the North Carolina Rules of Appellate Procedure. It is well-established that “[t]he Rules of Appellate Procedure are mandatory; failure to comply with these rules subjects an appeal to dismissal.” *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (citing *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)). Here, plaintiff has failed to comply with the requirements of Rule 28(b), which states in relevant part:

An appellant’s brief in any appeal shall contain . . . [a] full and complete statement of the facts. This should be a nonargumentative summary of all material facts underlying the matter in controversy which are necessary to understand all questions presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

N.C. R. App. P. 28(b)(5) (2006). Plaintiff failed to comply with Rule 28(b)(5) because plaintiff’s brief failed to contain a full and complete statement of the facts. The only language plaintiff includes in her statement of the facts reads as follows:

Plaintiff-Appellant hereby adopts in its entirety the Opinion and Award by Morgan S. Chapman, Deputy Commissioner, . . . and incorporates the same into the Appellant's Brief to the North Carolina Court of Appeals as if the same were specifically herein set out.

Although plaintiff attempted to incorporate facts from the opinion and award of the Deputy Commissioner, the only findings of fact properly reviewed by this Court are the findings of fact from the opinion and award of the Full Industrial Commission, not the hearing officer. *See* N.C. Gen. Stat. §97-85 to -86 (2005); *see also Adams*, 349 N.C. at 681, 509 S.E.2d at 413-14.

This Court has consistently held that “[o]ur rules of appellate procedure ‘must be consistently applied; otherwise, the Rules become meaningless, and an appellee is left without notice of the basis upon which an appellate court might rule.’” *Consol. Elec. Distribs., Inc. v. Dorsey*, 170 N.C. App. 684, 687, 613 S.E.2d 518, 520 (2005) (quoting *Viar v. N.C. Dep’t of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (per curiam), *reh’g denied*, 359 N.C. 641, 617 S.E.2d 662 (2005)). Accordingly, we hereby dismiss plaintiff’s appeal.

Dismissed.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).