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NO. COA05-1331

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

WAYNE GOODSON,  
Employee/Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 177963

MAFCO HOLDINGS, INC. d/b/a,  
REVLON CONSUMER PRODUCTS,  
Employer/Defendants,

and

RSKCO,  
Carrier/Defendant.

Appeal by Mafco Holdings, Inc. d/b/a Revlon Consumer Products and RSKCo Claims Services (defendants) from opinion and award entered 8 July 2005 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 May 2006.

*Scudder & Hedrick, by John A. Hedrick, for plaintiff-appellee.*

*Womble Carlyle Sandridge & Rice, PLLC, by Matthew S. Healey, for defendant-appellants.*

STEELMAN, Judge.

It is uncontested on appeal that plaintiff injured his back in August of 2001 in the course of his employment with Mafco Holdings, Inc. d/b/a Revlon Consumer Products (Revlon). Plaintiff was diagnosed with a lumbar back strain, and released for work with restrictions. Plaintiff continued this light duty work until 23 August 2001, at which time he ceased coming in

to work and began consulting multiple physicians concerning his back pain. Plaintiff never returned to work at Revlon, and was administratively terminated pursuant to company policy in November of 2002. There is no evidence in the record that defendant has sought other employment.

Plaintiff filed this worker's compensation claim 26 November 2001, and the matter was heard 12 November 2003 before Deputy Commissioner Nancy W. Gregory. Deputy Commissioner Gregory filed her opinion and award on 22 March 2004, in which she determined that, as a result of his injury by accident, plaintiff was unable to earn the same wages he had earned prior to the injury for the period from 24 August 2001 to 18 July 2002. Plaintiff was awarded a weekly compensation rate of \$278.05 for this period. She further determined that plaintiff had failed to prove he was incapable of earning the same wages after 18 July 2002. In addition, Deputy Commissioner Gregory awarded medical and other expenses not the subject of this appeal.

Defendants appealed Deputy Commissioner Gregory's opinion and award, and the Full Commission reviewed the award on 8 September 2004. The Commission affirmed the bulk of Deputy Commissioner Gregory's award, but reversed her determination that plaintiff had not proved an inability to earn the same or greater wages after 18 July 2002. The Commission awarded weekly disability benefits at a rate of \$278.05 from 23 August 2001 "until plaintiff returns to work or further order of the Commission[.]" From the opinion and award of the Full Commission, defendants appeal.

In defendants' sole argument on appeal, they contend that the Commission erred in concluding plaintiff was disabled after 18 July 2002 and therefore entitled to ongoing wage-loss

benefits. For the reasons stated below, we reverse in part and remand for additional findings of fact.

We first note that defendants have only assigned error to the third conclusion of law of the Commission, which states: “As a result of his compensable injury on August 16, 2001, plaintiff is entitled to temporary total disability compensation at a rate of \$278.05 from August 23, 2001 and continuing until plaintiff returns to work or an order of the Commission.” As defendants have not by assignments of error in the record challenged any additional conclusions of law, or any findings of fact, they are binding on appeal and remain undisturbed by our holding. *Koufman v. Koufman*, 330 N.C. 93, 97-98, 408 S.E.2d 729, 731 (1991).

Defendants present their argument in two parts: (1) defendants argue that plaintiff did not meet his burden of proving he was disabled after 18 July 2002; and (2) defendants argue that the Commission erred because its findings of fact are insufficient to support its award of compensation after 18 July 2002. We address defendants’ second argument first.

While the Industrial Commission is not required to make specific findings of fact on every issue raised by the evidence, it is required to make findings on crucial facts upon which the right to compensation depends. Specific findings on crucial issues are necessary if the reviewing court is to ascertain whether the findings of fact are supported by competent evidence and whether the findings support the conclusion of law. “Where the findings are insufficient to enable the court to determine the rights of the parties, the case must be remanded to the Commission for proper findings of fact.”

*Watts v. Borg Warner Auto., Inc.*, \_\_ N.C. App. \_\_, \_\_, 613 S.E.2d 715, 719 (2005) (citations omitted). In the instant case, the Full Commission reversed the ruling of the deputy commissioner, which determined that plaintiff had failed in his burden of proving disability by accident after 18 July 2002. The Full Commission thus awarded ongoing temporary total disability compensation after this date.

An employee injured in the course of his employment is disabled under the Act if the injury results in an “incapacity . . . to earn the wages which the employee was receiving at the time of injury in the same or any other employment.” Accordingly, disability as defined in the Act is the impairment of the injured employee’s earning capacity rather than physical disablement.

The burden is on the employee to show that he is unable to earn the same wages he had earned before the injury, either in the same employment or in other employment. The employee may meet this burden in one of four ways: (1) the production of medical evidence that he is physically or mentally, as a consequence of the work related injury, incapable of work in any employment, (2) the production of evidence that he is capable of some work, but that he has, after a reasonable effort on his part, been unsuccessful in his effort to obtain employment, (3) the production of evidence that he is capable of some work but that it would be futile because of preexisting conditions, i.e., age, inexperience, lack of education, to seek other employment, or (4) the production of evidence that he has obtained other employment at a wage less than that earned prior to the injury.

*Russell v. Lowes Prod. Distribution*, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993) (citations omitted). It is apparent that the Full Commission adopted the vast majority of the findings of fact of Deputy Commissioner Gregory, and struck portions dealing with the testimony of plaintiff’s physician, that he was able to go back to work by 18 July 2002 and that he was malingering, which conflicted with its modified opinion and award. The Full Commission did not make any additional findings of fact to support its conclusion that plaintiff was entitled to temporary total disability benefits to continue until he returned to work or until terminated by the Commission. Though the Full Commission is permitted to adopt the findings of fact of the deputy commissioner, it must still insure that these findings are sufficient to support its conclusions of law and award. *Hollar v. Montclair Furniture Co.*, 48 N.C. App. 489, 497, 269 S.E.2d 667, 672 (1980).

We hold that the Commission has failed to make findings on “crucial facts upon which the right to compensation depends.” *Watts*, \_\_ N.C. App. at \_\_, 613 S.E.2d at 719. The Commission’s opinion and award contains no specific conclusion of law that plaintiff has met his burden of showing an inability to earn the same wages after 18 July 2002 based upon any of the four *Russell* factors, and it is completely devoid of findings of fact that would support such a conclusion. *Russell*, 108 N.C. App. at 765, 425 S.E.2d at 457. Without findings of fact for this crucial issue, we cannot determine whether there was support for the Commission’s relevant conclusion of law and its award. We must therefore reverse the Commission’s award of temporary total disability benefits for the ongoing time period following 18 July 2002, and remand for proper findings of fact. *Watts*, \_\_ N.C. App. at \_\_, 613 S.E.2d at 719-20. The remainder of the Commission’s award is affirmed.

In light of our holding above, we do not address defendants’ first argument.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

Judges McGEE and ELMORE concur.

Report per Rule 30(e).