NO. COA04-1719

NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2005

CARL J. SPANO,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 186543

Mail Contractors of America,
Employer

and

LUMBERMEN'S MUTUAL CASUALTY COMPANY,
Carrier,
Defendants

Appeal by defendants from opinion and award entered 12 October 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 October 2005.

Hodgman and Oxner, by Todd P. Oxner, for plaintiff-appellee.

Brotherton, Ford, Yeoman, & Worley, P.L.L.C., by Joseph F. Brotherton and Steven P. Weaver, for defendant-appellants.

MARTIN, Chief Judge.

Mail Contractors of America ("MCA") and its insurance carrier, Lumbermen's Mutual Casualty Company (collectively "defendants"), appeal from an opinion and award of the North Carolina Industrial Commission (the "Commission") awarding Carl J. Spano ("plaintiff") ongoing total disability benefits as a result of a back injury. We reverse.

MCA hired plaintiff as a truck driver in July of 2000. Plaintiff's job duties involved inspecting and driving a tractor-trailer truck; picking up, loading, unloading, and delivering wheeled mail containers; and hooking and unhooking the trailer from the truck. The mail containers weighed, at times, in excess of 300 pounds.

Prior to 25 October 2001, plaintiff testified he suffered from occasional back pain but had not missed work due to back problems or sought medical attention. On 25 October 2001, plaintiff was loading and transporting bulk mail between Greensboro and Charlotte. Although plaintiff was not involved in an accident and could not recall an exact time that he began experiencing back pain, plaintiff's back began bothering him during his return trip from Charlotte. Plaintiff differentiated the pain he felt in his back on 25 October 2001 from his previous aches and pains and described the pain as "a real sharp pain in [his] lower back, running across [his] hip[.]"

Plaintiff did not initially report the pain; however, as the pain worsened the following day, plaintiff contacted MCA to report it on the advice of his family doctor. MCA's physician evaluated plaintiff and placed him on light duty with restrictions of lifting, pushing, and pulling no more than ten to twenty pounds, but MCA did not have any positions consistent with those restrictions. On 7 November 2001, plaintiff presented to MCA's treating physician for the final time and was referred to his family doctor. Dr. Avva, plaintiff's family doctor, evaluated plaintiff, took him out of work entirely, and sent plaintiff for an evaluation with Dr. Kramer, a physical medicine expert in an orthopedic surgeon group. Dr. Kramer concurred with Dr. Avva that plaintiff should be held entirely out of work. A subsequent MRI revealed a ruptured disc at L5-S1 and a bulging disc between L3-L4.

Plaintiff filed a claim for workers' compensation, which was denied by defendants on 2 November 2001. After a hearing on the matter, a deputy commissioner entered an order on 3 December 2003 denying plaintiff's claim. On 12 October 2004, the Commission reversed. The Commission found plaintiff "suffered an injury during his shift on the night of 25 October 2001" that resulted in his inability to work. Based on this finding, the Commission concluded plaintiff sustained a compensable injury "when he suffered a specific traumatic incident when, while driving a truck after unloading heavy objects, he felt a severe sharp pain in his back." The Commission awarded temporary total disability compensation from 26 October 2001 until plaintiff returned to work or other order of the Commission. From this opinion and award, defendants appeal.

This Court's review of an opinion and award of the Industrial Commission is "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." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). "[T]he full Commission is the sole judge of the weight and credibility of the evidence," *see id.*, and the Commission's "findings of fact are conclusive on appeal if supported by competent evidence even though there is evidence to support a contrary finding." *Murray v. Associated Insurers, Inc.*, 341 N.C. 712, 714, 462 S.E.2d 490, 491 (1995). The Commission's conclusions of law, however, are reviewed *de novo*. *Griggs v. Eastern Omni Constructors*, 158 N.C. App. 480, 483, 581 S.E.2d 138, 141 (2003).

Defendants assert Dr. Kramer's testimony, the only expert testimony received regarding medical causation, "did not in any way establish proximate causation between [plaintiff's] back problems and any specific traumatic incident sustained in the course and scope of his

employment" with MCA. "In cases involving 'complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury.'" *Holley v. ACTS, Inc.*, 357 N.C. 228, 232, 581 S.E.2d 750, 753 (2003) (quoting *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980)). Our Supreme Court has previously held that the cause of a herniated disc is a complicated medical question ordinarily requiring expert testimony. *Gillikin v. Burbage*, 263 N.C. 317, 325, 139 S.E.2d 753, 760 (1965); *see also Click*, 300 N.C. at 168, 265 S.E.2d at 391. Expert testimony that an injury possibly (i.e. "could" or "might" have) resulted from an accident or specific traumatic incident is insufficient to prove causation, especially where other evidence shows the testimony to be guesswork or speculation; however, expert testimony that an injury "likely" resulted from an accident or specific traumatic incident constitutes competent evidence to support a finding of causation. *Accord Cannon v. Goodyear Tire & Rubber Co.*, __ N.C. App. __, __, 614 S.E.2d 440, 446-447 (2005); *Edmonds v. Fresenius Med. Care*, 165 N.C. App. 811, 814, 600 S.E.2d 501, 504 (2004) ("Where the expert's opinion is that there 'could' or 'might' be a causal relationship, it is admissible if helpful for purposes of showing medical causation; however, it is not sufficiently reliable to constitute competent evidence of medical causation, especially if additional evidence suggests such testimony was merely a guess"), *rev'd per curiam on other grounds*, 359 N.C. 313, 608 S.E.2d 755 (2005)).

In the instant case, the evidence adduced through the testimony of Dr. Kramer indicated that plaintiff suffered from a degenerative disc disorder. When asked as to the origin of plaintiff's bulging and ruptured vertebral discs, Dr. Kramer affirmed that he had no information or knowledge from which he could say "there was any other origin of [plaintiff's] back problems . . . other than a degenerative [disc] process." Dr. Kramer further affirmed that he could not

"distinguish whether or not . . . the [bulging and ruptured] discs came from a specific incident or from the degenerative disc disease[.]" Dr. Kramer admitted that no information presented to him indicated "that any of the problem . . . in [plaintiff's] back [was] from any other source [than the long-term deterioration process.]" In fact, the only evidence Dr. Kramer provided in his deposition regarding medical causation of plaintiff's injury was that plaintiff's job duties on 25 October 2001 were "a type of behavior which could lead to the disc bulges which were noted on [plaintiff's] MRI[.]"

Based on this statement by Dr. Kramer, the Commission made a single finding of fact: "Dr. Kramer testified that the plaintiff's job duties that he completed during his shift on the night in question were the types of actions that could cause the plaintiff's back problems." While this finding accurately sets forth Dr. Kramer's opinion, that opinion provides no more than a possible cause of plaintiff's medical condition and does not rise to the level of competent evidence of medical causation required under the authority cited above. Since the record contains no other expert opinion to support a finding that plaintiff's herniated and bulging discs were caused by a specific traumatic incident, the Commission's conclusion that plaintiff sustained a compensable injury by accident arising out of and in the course of his employment is not supported by the findings of fact and the Commission's award must be reversed.

Reversed.

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).