NO. COA05-1028

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

ROBERT T. BUTNER,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 252880

PIEDMONT TRIAD HOMES, INC.,
Employer,

BERKLEY INSURANCE COMPANY
OF THE CAROLINAS
Carrier,
Defendants.

Appeal by plaintiff from Opinion and Award entered 26 May 2005 by the North Carolina Industrial Commission. Heard in the Court of Appeals 27 March 2006.

Crumley & Associates, P.C., by J. William Snyder, Jr., for plaintiff-appellant.

Young Moore and Henderson P.A., by Jeffrey T. Linder and Angela N. Farag, for defendant-appellees.

MARTIN, Chief Judge.

Plaintiff appeals from an opinion and award of the North Carolina Industrial Commission concluding that he failed to show he suffered an injury by accident. For the reasons that follow, we affirm the Commission.

Plaintiff worked as a subcontracting carpenter and the parties stipulated to the existence of an employer-employee relationship. Plaintiff's duties included: framing, roofing, vinyl siding

installation, sheet rocking, and painting, and he often ascended and descended ladders during the normal course of his employment. On 19 April 2002, while working for defendant, plaintiff stepped off a six-foot step ladder, hyperextended his knee, and tore his left anterior cruciate ligament (ACL). Plaintiff was transported to the hospital and eventually diagnosed with " a bucket-handle-type tear of the medial meniscus of the left knee with a displacement fragment into the intercondylar notch along with a torn ACL." Plaintiff opted for conservative treatment, undergoing arthroscopic surgery on 25 June 2002 to repair the medial meniscus tear, and treating the ACL instability with medications and bracing. The ACL remained symptomatic, and his orthopedic surgeon, Dr. O'Keeffe, recommended an arthroscopic reconstruction of the ACL in September 2003.

The Commission concluded plaintiff did not suffer an injury by accident, that the fall did not cause plaintiff's injury, and "[t]here was not an interruption in plaintiff's work routine and there was no evidence of any unusual condition that caused the unexpected consequences." Accordingly, it entered an order denying plaintiff's claim for compensation. From this order, plaintiff appeals.

On appeal, plaintiff contends his injury was an injury by accident arising out of and in the course of his employment, and that the Commission's findings of fact to the contrary misapprehend the law. We cannot agree. "The standard of review for an appeal from an opinion and award of the Industrial Commission is limited to a determination of (1) whether the Commission's findings of fact are supported by any competent evidence in the record; and (2) whether the Commission's findings justify its conclusions of law." *Goff v. Foster Forbes Glass Div.*, 140 N.C. App. 130, 132-33, 535 S.E.2d 602, 604 (2000). If there is competent evidence to

support the findings, they are conclusive on appeal even though there is evidence to support contrary findings. *Hedrick v. PPG Industries*, 126 N.C. App. 354, 357, 484 S.E.2d 853, 856, *disc. review denied*, 346 N.C. 546, 488 S.E.2d 801 (1997).

Under the Workers Compensation Act, injury "shall mean only injury by accident arising out of and in the course of the employment." N.C. Gen. Stat. §97-2(6) (2005). Our Supreme Court "has interpreted the language of the statute, 'injury by accident,' to mean an injury caused by accident," *Gunter v. Dayco Corp.*, 317 N.C. 670, 673, 346 S.E.2d 395, 397 (1986), and it has defined an accident as: "(1) an unlooked for and untoward event which is not expected or designed by the injured employee; (2) a result produced by a fortuitous cause." *Cody v. Snider Lumber Co.*, 328 N.C. 67, 70, 399 S.E.2d 104, 106 (1991) (internal citations omitted). If, however, "an employee is injured while carrying on his usual tasks in the usual way the injury does not arise by accident." *Gunter*, 317 N.C. at 673, 346 S.E.2d at 397.

The Commission made the following relevant findings of fact:

> 3. . . . While stepping back off the ladder, plaintiff hyperextended his left knee and tore his anterior cruciate ligament (ACL). When plaintiff put his left foot on the ground, he fell down on his right hip. Plaintiff could not say whether he missed the last rung of the ladder when he stepped down. . . .
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> 4. . . . Plaintiff did not have any significant problems with his left knee prior to the date of his injury. Dr. O'Keeffe rendered an opinion in a letter on June 4, 2002 that the mechanism of injury that plaintiff described to him of stepping off of a ladder, hyperextending his knee, feeling a pop, and suffering discomfort was consistent with the findings on the MRI scan.
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> . . . .
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> 7. At his deposition, ... Dr. O'Keeffe stated that it was not likely that plaintiff's ACL and meniscus tear were caused by plaintiff's impact with the floor. Furthermore, Dr. O'Keeffe stated that given plaintiff's size and weight, it was possible for the forces applied to plaintiff's knee when he stepped from a ladder in

the normal and usual way to create an opportunity for hyperextension and the subsequent ACL and meniscal tear.

8. Plaintiff was performing duties for defendants at a time designated by his employer for the performance of work and at a house being constructed by defendants. Accordingly, plaintiff was in the course of his employment at the time of his injury.

9. The greater weight of the evidence does not establish that plaintiff sustained a compensable injury by accident. Plaintiff stepped from the ladder and tore his ACL and meniscus prior to his foot touching the ground and his falling on his right side. On April 19, 2002, plaintiff stepped off the ladder in his usual way, his knee buckled and he fell. Plaintiff did not slip, twist or fall from the ladder and there was nothing on the ladder that caused plaintiff to injure himself. There was no interruption in plaintiff's work routine and there was no unusual condition that caused the unexpected consequences.

The following competent evidence was before the Commission. Plaintiff testified as follows:

A. When I stepped back off the ladder I'd hyperextended my leg and tore my ACL. I didn't know that I had tore the ACL at the time. Well, I know that I was hurt, and that was basically it.

Q. Before you fall - before you fell, do you recall if your foot touched the ground or not?

A. Yes, sir, it did.

Q. Did it touch the ground normally or abnormally?

A. I'd guess normally. I just - I do things kind of quickly, just I'm geared that way. So as I'm going, I just go when I step down.

. . . .

Q. Did you start falling before your foot touched the floor or after the foot touched the floor?

A. After, sir.

Additionally, his treating physician stated in his deposition that the injury "may have happened before he hit the ground. It may have happened during the twisting of the knee, which may or may not have occurred as he hit the ground." He further opined it was not likely plaintiff tore his ACL from impact with the floor to the knee.

Since there is competent evidence supporting the Commission's finding that plaintiff's injury occurred while carrying on his usual tasks, in his usual manner, thus supporting its conclusion there was no "injury by accident," we must affirm.

Affirmed.

Judges HUDSON and BRYANT concur.

Report per Rule 30(e).