*An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.*

NO. COA06-1437

NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2007

LEONARD J. BRADSHAW,
Employee,
Plaintiff,

v. North Carolina Industrial Commission
I.C. File No. 273768

WAL-MART STORES, INC.,
Employer,

AMERICAN HOME ASSURANCE,
Carrier,
Defendants.

Appeal by plaintiff from opinion and award entered 26 July 2006 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 May 2007.

*Brumbaugh, Mu & King, P.A., by Nicole D. Wray, for plaintiff-appellant.*

*Young Moore and Henderson, P.A., by Jennifer T. Gottsegen, for defendants-appellees.*

GEER, Judge.

Plaintiff Leonard J. Bradshaw appeals from an opinion and award of the North Carolina Industrial Commission denying his claim for workers' compensation benefits. In his sole argument on appeal, plaintiff contends that "[t]he overwhelming weight of the competent, credible evidence establishes that Plaintiff sustained a compensable injury by accident . . . ." Under our standard of review, the Full Commission is the sole judge of the weight and credibility

of the evidence. Because the Commission's findings of fact are supported by competent evidence and those findings in turn support the conclusions of law, the opinion and award is affirmed.

Facts

At the time of the hearing in this matter, plaintiff was 43 years old. Before working for defendant-employer, plaintiff worked in construction, in various jobs for the City of Wilmington, and at a trailer manufacturing plant. Initially, plaintiff worked for defendant-employer as an unloader, but at the time that plaintiff alleged he was injured, on 10 July 2002, he was managing the furniture department in one of defendant-employer's stores.

According to plaintiff, he injured his lower back when he squatted down and attempted to lift a box containing an entertainment center. He testified that he felt something "pop" in his lower back. He informed his supervisor, Harry Anderson, of the incident, and, according to plaintiff, Mr. Anderson advised him to seek medical care if necessary. No accident report was ever completed. Mr. Anderson testified that he remembered plaintiff reporting a back injury during the time plaintiff worked as an unloader, but he was not sure about the precise day. Mr. Anderson denied recalling any incident related to the lifting of an entertainment center. According to Mr. Anderson, plaintiff made multiple complaints of low back pain prior to the date of the alleged injury.

Plaintiff finished his shift and went home. He claimed that, on that same evening, he went to the emergency room because of increased pain. Medical records, however, reflected that plaintiff first visited the emergency room on 15 July 2002. The records contained no reference to a work-related injury and reported that plaintiff complained of having experienced low back pain for years.

During the visit, hospital personnel diagnosed plaintiff with acute lower back pain and referred him to Dr. Richard M. Leighton, an orthopedist who had previously treated plaintiff for a neck injury sustained in an automobile accident. Records from Dr. Leighton's prior treatment of plaintiff indicated that plaintiff reported having experienced intermittent low back pain for years.

Dr. Leighton examined plaintiff on 24 July 2002 and diagnosed his condition as low back pain and a lumbar sprain or strain. Dr. Leighton prescribed physical therapy, but did not remove plaintiff from work or assign work restrictions. Dr. Leighton's records from this examination and from a 4 September 2002 visit did not contain any indication that this was a work-related injury. On 4 September, Dr. Leighton restricted plaintiff to lifting less than 30 pounds.

Three months after the date of the alleged injury, on 8 October 2002, plaintiff gave defendant-employer written notice of his workers' compensation claim. Plaintiff asserts that any delay in filing his claim was due to the fact that he did not initially believe his condition to be serious. Also on 8 October 2002, defendants sent plaintiff to Shallotte Urgent Care, where a physician's assistant diagnosed him as having low back pain and a low back strain without radicular symptoms. Plaintiff was released to return to work with a lifting restriction of no more than 20pounds and a restriction to sitting work only. On 14 October 2002, plaintiff requested that defendant-employer grant him a leave of absence because, according to his testimony, defendant-employer did not have work available for him.

Medical records indicate that plaintiff again visited Dr. Leighton on 23 October 2002 with complaints that his back condition had become aggravated. Dr. Leighton referred plaintiff to Dr. Sunil K. Arora, an anesthetist and pain-management specialist, who examined plaintiff on

5 December 2002. Despite taking an extensive history of plaintiff's condition, Dr. Arora made no mention in his notes that plaintiff had suffered an injury on the job.

Following a hearing, Deputy Commissioner Bradley W. Houser entered an opinion and award on 6 July 2005 denying plaintiff's claim. Plaintiff appealed to the Full Commission. In an opinion and award entered on 26 July 2006, with Commissioner Thomas J. Bolch dissenting, the Full Commission denied plaintiff's claim for benefits on the ground that "[p]laintiff has failed to prove by the greater weight of the evidence that he sustained a compensable injury by accident or specific traumatic incident as a result of the work assigned on or about July 10, 2002, or at any other time."

Plaintiff timely appealed to this Court. Defendants have cross-assigned error, asserting that the Industrial Commission erred in failing to find that plaintiff's claim was barred by N.C. Gen. Stat. §97-22 (2005) ("Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, . . . but no compensation shall be payable unless such written notice is given within 30 days after the occurrence of the accident or death . . . .").

Discussion

Our review of a decision of the Industrial Commission "is limited to determining whether there is any competent evidence to support the findings of fact, and whether the findings of fact justify the conclusions of law." *Cross v. Blue Cross/Blue Shield*, 104 N.C. App. 284, 285-86, 409 S.E.2d 103, 104 (1991). "The findings of the Commission are conclusive on appeal when such competent evidence exists, 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, *disc. review denied*, 351 N.C.

473, 543 S.E.2d 488 (2000). This Court reviews the Commission's conclusions of law de novo. *Deseth v. LensCrafters, Inc.*, 160 N.C. App. 180, 184, 585 S.E.2d 264, 267 (2003).

Although plaintiff has recited the proper standard of review in his brief, he has disregarded that standard in arguing that the Full Commission erred in failing to find that he sustained an injury by accident. He points to the evidence supporting his claim, including his testimony that (1) he went to an emergency room on 10 July 2002 seeking treatment for his pain, and (2) he informed his supervisor, Mr. Anderson, of the injury to his back. The Commission was, however, entitled to deem more credible and give greater weight to other evidence suggesting that no incident occurred, including evidence that emergency room records reflected a visit five days after plaintiff claimed to have visited the emergency room; the lack of any reference in the emergency room records or other medical records of a work-related injury; inconsistencies identified by the Commission in plaintiff's testimony; and evidence, in the form of medical records and the testimony of coworkers, of ongoing intermittent low back pain predating plaintiff's claim.

Since it is well-settled that "'[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony,'" *Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)), we must reject plaintiff's invitation to revisit the Commission's determinations on such matters. The evidence relied upon by the Commission was sufficient to "cast serious doubt on whether a work-related injury occurred as plaintiff represented." *Rogers v. Smoky Mountain Petroleum Co.*, 172 N.C. App. 521, 524, 526, 617 S.E.2d 292, 295-96 (2005) (holding "the Commission did not err in finding plaintiff failed to meet his burden of proof to establish that he suffered a back injury resulting from a specific traumatic incident on 16 May

2001" where "[p]laintiff's testimony revealed several inconsistencies in the medical information he shared with his treating physicians").

Plaintiff makes no other argument and, accordingly, we affirm the Commission's opinion and award. Given our resolution of plaintiff's appeal, we need not address defendants' cross-assignment of error. *See Goodman Toyota, Inc. v. City of Raleigh*, 63 N.C. App. 660, 666, 306 S.E.2d 192, 196 (1983), *disc. review denied*, 310 N.C. 477, 312 S.E.2d 884 (1984).

Affirmed.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).