NO. COA06-644

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

DOREEN FINCHER,
Employee,
Plaintiff-Appellee;

v.

North Carolina Industrial Commission
I.C. File Nos. 331785 & 347389

GOODYEAR TIRE & RUBBER COMPANY
d/b/a KELLY SPRINGFIELD TIRE,
Employer;

LIBERTY MUTUAL GROUP,
Carrier;
Defendants-Appellants.

Appeal by defendants from Opinion and Award of the Full Commission of the North Carolina Industrial Commission entered 02 March 2006. Heard in the Court of Appeals 23 January 2007.

The Jernigan Law Group, by Gina E. Cammarano, for plaintiff-appellee.

Cranfill, Sumner & Hartzog, L.L.P., by Jaye E. Bingham and Erin F. Taylor, for defendants-appellants.

WYNN, Judge.

In general, our review of findings supporting an Opinion and Award of the North Carolina Industrial Commission is limited to determining whether any evidence supports the findings of fact.**[Note 1]** Here, the defendant essentially asks us to re-weigh the evidence and determine that the Full Commission erred in its findings. Because the standard of review for

workers' compensation cases prohibits the re-weighing of evidence on appeal, we affirm the Opinion and Award.

Plaintiff Doreen Fincher began working as a tire builder for Defendant Goodyear Tire & Rubber Company, doing business as Kelly Springfield Tire, in November 1997. Initially, Plaintiff worked twelve-hour shifts for Kelly Springfield, until she went on the third shift, from 11:00 p.m. to 7:00 a.m., six days a week, in 2001. Prior to her employment at Kelly Springfield, Plaintiff gave birth to four children after three pregnancies. She underwent a tubal ligation procedure after the birth of her last child in September 1997 and a "tummy tuck" procedure in 2000.

Plaintiff's work as a tire builder for Kelly Springfield involved lifting, pushing, and pulling significant amounts of weight during the course of a shift. In March 2003, Plaintiff began experiencing health problems, including leaking urine and feeling pressure in her abdomen and pain in her lower back. After consulting her family physician and a specialist, Plaintiff was diagnosed with first-degree uterine prolapse and drop in the urethrovesical angle. She was then taken out of work by her doctor, before undergoing surgery on 6 May 2003 for a hysterectomy and procedures to resolve her urinary incontinence.

On 21 May 2003, Plaintiff filed a Form 18, Notice of Accident to Employer and Claim of Employee, with the Industrial Commission, alleging that her prolapsed uterus and fallen bladder were attributable to her work at Kelly Springfield. She returned to Kelly Springfield on 7 July 2003 but performed only light duty work due to her conditions. Kelly Springfield filed a Form 61, Denial of Workers' Compensation Claim, on 24 July 2003, contending that Plaintiff had not sustained an injury by accident arising out of and in the course and scope of employment and that her condition was the result of a prior condition and not causally related to her employment.

Kelly Springfield sent Plaintiff home from work on 10 October 2003, informing her that there was no longer any light duty work available within her restrictions; she has not returned to the job since then.

On 21 April 2005, Deputy Commissioner Theresa B. Stephenson filed an Opinion and Award in favor of Kelly Springfield, concluding that Plaintiff had failed to establish that her injuries were characteristic to her employment and were not a disease to which the general public was equally exposed, or that they were causally connected to her employment. Plaintiff appealed to the Full Commission, which reviewed the case on 8 December 2005, and filed an Opinion and Award reversing that of Deputy Commissioner Stephenson and finding instead in favor of Plaintiff. In its findings of fact, the Full Commission stated that, contrary to Deputy Commissioner Stephenson, it "g[a]ve greater weight to the opinions of . . . [Plaintiff's] treating physician, as [Kelly Springfield's] expert witness . . . has never met with or examined [Plaintiff]." Additionally, the Full Commission found that the greater weight of the evidence showed that Plaintiff was at increased risk of her injuries than the general public because of her employment with Kelly Springfield, and that the heavy lifting at her job was "a significant, or very important, contributing factor" in her injuries.

Kelly Springfield now appeals that Opinion and Award, arguing that (I) the findings of fact concerning whether Plaintiff suffered from a compensable occupational disease were not supported by competent evidence, and its conclusions of law and subsequent award based on this issue were not supported by the findings of fact or the applicable law, and (II) the Commission erred in failing to make necessary findings regarding the required elements of an occupational disease claim.

I.

First, Kelly Springfield contends that the Full Commission's findings of fact concerning whether Plaintiff suffered from a compensable occupational disease were not supported by competent evidence and, accordingly, the Commission's conclusions of law and award based on those findings were erroneous. We disagree.

On review of an Opinion and Award from the Full Commission of the North Carolina Industrial Commission, this Court 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). In particular, this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999).

If there is any evidence at all, taken in the light most favorable to the plaintiff, the finding of fact stands, even if there is substantial evidence supporting the opposing position, *id.*, and findings may be set aside on appeal only "where there is a complete lack of competent evidence to support them." *Rhodes v. Price Bros., Inc.*, 175 N.C. App. 219, 221, 622 S.E.2d 710, 712 (2005) (quotation omitted). However, we review the Commission's conclusions of law *de novo*. *Griggs v. Eastern Omni Constructors*, 158 N.C. App. 480, 483, 581 S.E.2d 138, 141 (2003).

After a careful review of the record before us, we conclude that there is competent evidence to support each of the Full Commission's findings of fact challenged by Kelly Springfield. First, Kelly Springfield objects to the Full Commission's finding that Plaintiff's doctor "took [her] out of work due to the lifting requirements of her job." In his deposition,

however, Plaintiff's doctor stated that he was concerned by the manual labor nature of Plaintiff's job and how that was contributing to her lower back pain, which was linked to her prolapsed uterus. He then confirmed that he took her out of work at the time of that appointment and discussion regarding her pain. These statements constitute competent evidence to support the Full Commission's finding.

Likewise, although Kelly Springfield challenges the Full Commission's finding that Plaintiff's employment "was a contributing factor for developing uterine prolapse and cystocele [fallen bladder]," the doctor answered, "I believe it was," in direct response to that question during his deposition, and later stated that "[the heavy lifting] is a contributing factor." Again, this is sufficient evidence to support the finding of fact and to withstand our review at the appellate level.

The remaining three findings of fact challenged by Kelly Springfield all refer to the Commission's determination to give greater weight to certain evidence, including the testimony of Plaintiff's doctor rather than the expert witness for the defense. As this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight ," *Adams*, 349 N.C. at 681, 509 S.E.2d at 414, and we have found competent evidence to support the Full Commission's determinations, we conclude that these findings of fact are binding upon this Court.

Kelly Springfield also argues that the Commission's conclusion of law that Plaintiff's pelvic prolapse is an occupational disease is not supported by its findings of fact. We disagree.

North Carolina General Statute §97-53(13) provides that an occupational disease is "[a]ny disease . . . which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases

of life to which the general public is equally exposed outside of the employment." N.C. Gen. Stat. §97-53(13) (2005). In construing these requirements, our State Supreme Court has stated that,

> To satisfy the first and second elements it is not necessary that the disease originate exclusively from or be unique to the particular trade or occupation in question. All ordinary diseases of life are not excluded from the statute's coverage. Only such ordinary diseases of life to which the general public is exposed equally with workers in the particular trade or occupation are excluded. Thus, the first two elements are satisfied if, as a matter of fact, the employment exposed the worker to a greater risk of contracting the disease than the public generally. The greater risk in such cases provides the nexus between the disease and the employment which makes them an appropriate subject for workmen's compensation.

Rutledge v. Tultex Corp./Kings Yarn, 308 N.C. 85, 93-94, 301 S.E.2d 359, 365 (1983) (internal citations and quotation omitted).

The Commission's findings of fact that Plaintiff's employment was a contributing factor to her injuries and that her job placed her at increased risk for such injuries support their conclusion that her condition was an occupational disease, even if not exclusive to those in her type of employment. An award based on that conclusion of law was appropriate. These assignments of error are accordingly overruled.

II.

Kelly Springfield next argues that the Commission erred in failing to make necessary findings regarding the required elements of an occupational disease claim. We disagree.

As this Court has noted in the past, "the Industrial Commission is not required to make specific findings of fact on every issue raised by the evidence," but only on "crucial facts upon which the right to compensation depends." *Watts v. Borg Warner Automotive, Inc.*, 171 N.C. App. 1, 5, 613 S.E.2d 715, 719, *aff'd per curiam*, 360 N.C. 169, 622 S.E.2d 492 (2005). Here,

the Full Commission made findings sufficient to determine the right to compensation; Kelly Springfield objects only that the Full Commission failed to make findings that would have supported its position rather than Plaintiff's. We find that argument to be without merit.

Affirmed.

Judges HUNTER and STEELMAN concur.

Report per rule 30(e).

NOTE

1. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999).