

Sellers - affirm

Mauretic

Scott - dissent

NO. COA99-286

NORTH CAROLINA COURT OF APPEALS

Filed: 15 February 2000

FRANCES McCracken,  
Plaintiff,

v.

North Carolina  
Industrial Commission  
I.C. No. 339501

STANDARD PRODUCTS,  
Employer,

ITT HARTFORD INSURANCE CO.,  
Carrier,  
Defendants.

Appeal by plaintiff from opinion and award filed 23 September 1998 by the North Carolina Industrial Commission. Heard in the Court of Appeals 4 January 2000.

*Early & Chandler, P.A., by Robert M. Chandler, Jr., for plaintiff-appellant.*

*Cranfill, Sumner & Hartzog, L.L.P., by P. Collins Barwick, III, for defendant-appellees.*

LEWIS, Judge.

Plaintiff, now deceased, was employed by defendant Standard Products as a mold operator. Her job duties included loading stock onto various molds and then fusing these molds together. She also was responsible for cutting up any rubber parts that were rejected. On 21 May 1993, while cutting up rejected parts, the scissors she was using broke in the palm of her right hand. Thereafter, plaintiff saw Dr. Rosario Guarino, complaining of persisting pain in her hand as a result of the work-related injury. Dr. Guarino

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diagnosed her as having carpal tunnel syndrome. Carpal tunnel release surgery was subsequently performed on 2 November 1993. During this time, plaintiff also continued to experience pain in her right fingers. After diagnosing her with trigger finger syndrome, Dr. Frederick Park performed trigger finger release surgery on 27 December 1993.

In light of her work-related injury, plaintiff and defendants eventually entered into a Form 21 agreement, under which defendants agreed to pay plaintiff \$228.28 per week beginning 2 November 1993 and continuing for "necessary weeks." Significantly, the injury listed on the Form 21 agreement was to plaintiff's "right hand and fingers." After being cleared by Dr. Park to do so, plaintiff returned to work on 23 January 1994, earning the same wages as before.

The record is not entirely clear, but at some point, plaintiff began experiencing pain in her neck and right shoulder area. Consequently, she visited Dr. Lucas Martinez on 26 January 1995. Dr. Martinez concluded that plaintiff had a herniated disk that was causing a pinched nerve in her neck. On 18 April 1995, Dr. Martinez removed plaintiff's herniated disk. Plaintiff's neck pain, however, persisted, and Dr. Martinez assigned her a permanent disability rating of five percent in the hand and seven percent in the neck. Continuing to experience neck pains for more than a year later, plaintiff voluntarily terminated her employment on 22 April 1996. She died on 17 April 1998 of cancer unrelated to her injuries.

Prior to her death, plaintiff filed a Form 33 request for hearing seeking disability benefits for her injuries to her fingers, hand, and neck. In an opinion and award filed 20 March 1998, Deputy Commissioner Wanda Blanche Taylor found plaintiff's 21 May 1993 work-related injury to be the cause behind her finger and hand injury that resulted in the carpal tunnel and trigger finger release surgeries, but not the cause behind her neck condition that resulted in the herniated disk surgery. Instead, the deputy commissioner found that plaintiff's neck condition stemmed from a February 1992 automobile accident and/or degenerative osteoarthritis. Consequently, the deputy commissioner denied plaintiff any disability benefits for her neck condition. The deputy commissioner also concluded that plaintiff's work-related injury resulted in permanent partial disability to her right hand, thereby entitling her to benefits of \$228.28 per week for ten weeks. Plaintiff appealed to the Full Commission. In an opinion and award filed 23 September 1998, the Full Commission, with one commissioner dissenting, affirmed the deputy commissioner's findings, conclusions, and award. Plaintiff now appeals, bringing forth two arguments: (1) her neck condition was caused by her work-related injury, not the automobile accident or arthritic condition; and (2) the injuries to her hand and fingers resulted in permanent total disability, not permanent partial disability. Each argument will be examined in turn.

We begin with a recitation of our standard of review in cases from the Industrial Commission. Specifically, our review is

limited to two questions: (1) whether the findings of fact are supported by competent evidence; and (2) whether these findings support the conclusions of law. *Barham v. Food World*, 300 N.C. 329, 331, 265 S.E.2d 676, 678 (1980). Under the first inquiry, we do not have the right to weigh the evidence heard by the Industrial Commission. *Anderson v. Construction Co*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). As long as there is some evidence to support the Commission's findings, these findings are conclusive on appeal, even if the greater weight of the evidence conflicts with these findings. *Id.* at 434, 144 S.E.2d at 275. Because this case is largely factual in nature, our narrow standard of review essentially dictates plaintiff's defeat on appeal.

First, plaintiff contends that her neck condition was caused by the 21 May 1993 accident at work. The Industrial Commission disagreed, making the following finding:

18. Plaintiff's cervical spine condition is not a result of her May 21, 1993 compensable injury by accident, but rather is a result of her February 19, 1992 automobile accident and/or an osteoarthritic condition.

There is competent evidence in the record to support this finding. With respect to osteoarthritis (sometimes referred to as rheumatoid arthritis), Dr. John Mitchell, plaintiff's regular physician, testified:

- Q: And does that form, then, reflect that she is disabled as you testified to, to a reasonable degree of medical certainty -- as a result of her arthritic complaints?
- A: Yes, sir.

(Mitchell Dep. at 23). He then concluded, "The rheumatoid

arthritis would be independent of -- of, you know, the work related situation." (Mitchell Dep. at 31).

As to the automobile accident as a causative factor, Dr. Mitchell testified:

Q: If the evidence were to show degenerative changes, including osteoarthritis and -- in particular in the area of C3-4, do you have an opinion to a reasonable degree of medical certainty over whether or not the February '92 automobile accident and the subsequent complaints and treatment that she received, reflecting the neck problem she was having, could have triggered the onset of these degenerative changes and caused these problems?

A: It may have, you know, triggered the osteoarthritic complaints. I believe, you know, it could have.

Q: There's no evidence that her neck complaints had anything to do with what she was doing at work, is that correct?

A: The -- the neck we pretty well dealt with with the motor vehicle accident, and so forth, at that point.

(Mitchell Dep. at 25, 31).

The fact that Dr. Martinez felt her neck problems were caused by her work injury, or that plaintiff injured her left shoulder in the car accident but complained here of pain in her right shoulder, is of no consequence, given our standard of review. As previously pointed out, we cannot weigh the respective evidence nor determine credibility; our only task is to determine whether the record contains some evidence tending to support the Commission's findings. *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274. The record does so here.

Plaintiff nonetheless contends that the Industrial Commission

incorrectly applied the law by placing the burden on her to prove her neck condition was caused by the accident at work. Specifically, plaintiff points to the Form 21 agreement between her and defendants, under which defendants agreed to pay her temporary total disability benefits for "necessary weeks." A Form 21 agreement, once approved by the Commission, constitutes an admission of liability by the employer for disability compensation. *Kisiah v. W.R. Kisiah Plumbing*, 124 N.C. App. 72, 77, 476 S.E.2d 434, 436 (1996), *disc. review denied*, 345 N.C. 343, 483 S.E.2d 169 (1997). The burden then shifts to the employer to prove that the disability has ended. *Id.* The employee's mere return to work, even if at the same wages as before the injury, is insufficient in and of itself to meet this burden. *Id.* at 78-79, 476 S.E.2d at 437-38. Plaintiff argues that, even though she returned to work at the same wages, her employer, due to their Form 21 agreement, still had the burden of proving her disability had ended. We disagree.

Significantly, the Form 21 agreement listed only plaintiff's right hand and fingers as injured. Her neck condition was never included in the Form 21 agreement. Thus, her employer never admitted liability for plaintiff's neck condition. Accordingly, the initial burden remained with *plaintiff* to prove disability with respect to her neck. As such, one of the elements she had to prove was that her neck condition was caused by her accident at work. *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1982). She failed to meet that burden here.

Next, plaintiff contends that the Industrial Commission erred

by concluding that she was only permanently and *partially* disabled as a result of the 21 May 1993 work accident. Plaintiff claims that she became permanently and *totally* disabled. Again, however, there is competent evidence in the record to support the Commission's findings. Specifically, Dr. Martinez testified:

- Q: And did you have an opinion at that time what, if any, permanent partial disability she had to her body?  
A: I did believe at that time she had a five-percent partial permanent disability to the right hand as a result of -- of her carpal tunnel . . . .

(Martinez Dep. at 13). Plaintiff nonetheless points to Dr. Mitchell's testimony, in which he concluded that she could not return to the same type of work after her herniated disk surgery and ongoing neck pain. However, the relevant inquiry here is the degree of disability to plaintiff *as a result of her work-related injury*. As previously stated, plaintiff did not prove the accident at work caused her neck condition. Thus, any disability (even if permanent and total) that resulted from her herniated disk surgery and ongoing neck pain would not be compensable under our Worker's Compensation statutes. Accordingly, we agree with the Full Commission.

Affirmed.

Judges GREENE and EDMUNDS concur.

Report per Rule 30(e).