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No. COA99-1048

NORTH CAROLINA COURT OF APPEALS

Filed: 1 August 2000

CLENELL COVINGTON,
Plaintiff-Appellant,

v.

Industrial Commission
No. 359554

SARA LEE HOSIERY,
Defendant-Appellee.

Appeal by plaintiff from opinion and award entered 26 May 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 June 2000.

Ferguson, Stein, Wallas, Adkins, Gresham & Sumter, P.A., by Geraldine Sumter, for plaintiff-appellant.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Hatcher Kincheloe and Sharon E. Dent, for defendant-appellee.

MARTIN, Judge.

Plaintiff appeals from an opinion and award of the North Carolina Industrial Commission denying her claim for workers' compensation benefits for an alleged work-related disability.

Plaintiff was employed by defendant Sara Lee Hosiery for twenty-three (23) years. She had a pre-existing epileptic condition which was first diagnosed in her early twenty's (20's) when she began having seizures. Her condition was subsequently brought under control through medication, and plaintiff suffered no seizures from 1985 until sometime after June 1993. On the 8th of June 1993, plaintiff slipped on a wet concrete floor in the company canteen, striking the floor with her head first, followed by her whole body. Plaintiff was examined by Dr. Gilbert Arenas. As a

result of the fall, plaintiff injured her head, neck, right shoulder and right leg. Plaintiff became dizzy but she did not lose consciousness and x-rays did not reveal any skull fractures. Dr. Arenas prescribed a muscle relaxant and anti-inflammatory medication for plaintiff and provided follow-up treatment for cervical spasms and shoulder pain.

Plaintiff received treatment from additional physicians as well. In July 1993, Dr. Mark E. Brenner, of the Pinehurst Surgical Clinic, began a course of treatment with plaintiff for her cervical and lumbar strain. Dr. Brenner treated plaintiff for neck, arm and leg pain in August 1993, and continued to treat her for the next few years for swelling of her legs. In April 1994, plaintiff complained to her family physician, Dr. Fred McQueen, of renewed seizure activity. He referred plaintiff to Dr. Jack L. Young, a neurological specialist. Plaintiff was also treated, from September 1995 to April 1996, by Dr. Bradley Vaughn, another neurological specialist, and underwent an independent medical examination by Dr. Steven Freedman at the request of defendant. All of these physicians were deposed, and their statements were included in the record.

After considering and weighing the opinions rendered by Dr. McQueen, Dr. Freedman, Dr. Young and Dr. Vaughn, the deputy commissioner determined that plaintiff sustained an injury by accident arising out of and in the course of her employment which aggravated plaintiff's pre-existing condition involving seizures. Plaintiff, therefore, was awarded temporary total disability

compensation by the deputy commissioner in an opinion and award entered 20 January 1998. The defendant employer appealed this opinion and award to the Full Commission. The Full Commission, upon reconsideration of the evidence, reversed the opinion and award of the deputy commissioner. The Full Commission found that plaintiff was entitled to have defendant pay for all medical expenses incurred by plaintiff as a result of her compensable back, shoulder and right leg injuries resulting from the 8 June 1993 fall, but that the medical evidence was insufficient to support the conclusion that plaintiff's subsequent recurrence of seizures was causally related to the 8 June 1993 fall. Plaintiff appealed.

The standard of review on appeal to this Court of an opinion and award of the Industrial Commission is whether there is any competent evidence in the record to support the Commission's findings of fact and whether these findings support the Commission's conclusions of law. *Sidney v. Raleigh Paving & Patching, Inc.*, 109 N.C. App. 254, 426 S.E.2d 424 (1993). The findings of fact made by the Commission are conclusive on appeal when supported by competent evidence, even when there is evidence to support a contrary finding. *Morrison v. Burlington Industries*, 304 N.C. 1, 282 S.E.2d 458 (1981). In weighing the evidence, the Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Russell v. Lowes Product Distribution*, 108 N.C. App. 762, 425 S.E.2d 454 (1993). And, although the Commission may not wholly disregard or ignore

competent evidence, it may choose not to believe the evidence after considering it. *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 486 S.E.2d 252 (1997). Thus, an opinion of the Industrial Commission is conclusive on this Court if there is any competent evidence to support the findings of fact and these findings justify the Commission's conclusions of law, *Priddy v. Cone Mills Corp.*, 58 N.C. App. 720, 294 S.E.2d 743 (1982), and can only be set aside if there is a complete lack of competent evidence. *Carrington v. Housing Authority*, 54 N.C. App. 158, 282 S.E.2d 541 (1981).

Plaintiff argues that the Commission erred in determining that the evidence presented was insufficient to find that the work-related injury aggravated her pre-existing condition, causing a recurrence of seizure activity. This argument prevails only if the record reflects that there is no competent evidence upon which the Commission could base its findings, or that the Commission totally disregarded competent evidence. In this case, the Commission made the following findings of fact:

> 5. A 8 June 1993 x-ray of plaintiff's skull did not reveal any fractures.
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> 6. No evidence was presented that would support a finding that plaintiff experienced a brain hemorrhage following the 8 June slip and fall.
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> 13. On 30 November 1994, plaintiff presented to neurologist and brain specialist, Dr. Jack L. Young. Dr. Young treated plaintiff for her seizures with various medications through 22 August 1995. He concluded that plaintiff's seizures were idiopathic, without any specific cause.
>
> 15. Dr. McQueen continued to treat plaintiff

while she was seeing Dr. Young and continuing through September 1996. Dr. McQueen believes plaintiff's seizure activity was aggravated by her slip and fall on 8 June 1993, but bases his diagnosis solely on the fact that her seizure activity increased after the fall.

16. Neurologist Dr. Bradley V. Vaughn examined plaintiff on 28 September 1995. Dr. Vaughn stated that he did not have enough information in regards to the 8 June 1993 fall to make an accurate determination of whether it had an impact on plaintiff's seizures. However, he noted that, in order for head trauma to be an accepted cause of epilepsy, the trauma generally must be severe enough to cause loss of consciousness for greater than 24 hours, hemorrhaging into the brain, or a skull fracture. Dr. Vaughn also opined that it is very common for people with epilepsy to experience a period of no seizures and a positive response to medication, followed by a recurrence of the condition and a lack of positive response to the same medication.

17. On 28 February 1997 plaintiff was interviewed by neurologist Dr. Steven Freedman. Dr. Freedman conducted a forty-five minute interview with plaintiff and her husband and examined the records of Drs. Arenas and McQueen. Dr. Freedman agreed with Dr. Vaughn's statements regarding the general necessity of having a loss of consciousness, hemorrhaging or a skull fracture to bring on epileptic seizures, and that it was not unusual for people with the condition to experience a period without seizures. He also stated that the overwhelming majority of cases in which a recurrence of seizures was experienced, the onset of seizures was idiopathic with no known cause. Further, as time passes between the head trauma and the recurrence of seizures, the likelihood of a causal relationship is reduced. Specifically, he stated that "several months is sort of stretching it." Despite this testimony, Dr. Freedman opined that he thought plaintiff's condition was probably aggravated by her fall, but admitted that there was no way to prove it and he based his conclusion on no more than a "gut clinical sense" without supporting medical evidence.

As these findings of fact indicate, the Commission considered

and weighed the contradictory testimony and concluded that the slip and fall was not causally related to the recurrence of plaintiff's seizures. There is in the record sufficient competent evidence to support the Commission's findings of fact, and these findings justify the Commission's conclusions of law. We are thus bound by the Commission's findings, and affirm its opinion and award.

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).