NO. COA08-1562

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

GLENN B. LOCKLEAR, Employee,
Plaintiff-Cross-Appellant,

v. The North Carolina Industrial Commission
No. 665675 and 395486

PALM HARBOR HOMES, INC. d/b/a MASTERPIECE HOUSING, AMERICAN HOME ASSURANCE COMPANY, and BROADSPIRE,
Defendants-Appellants,

and

PALM HARBOR HOMES, INC. d/b/a MASTERPIECE HOUSING and ST. PAUL FIRE AND MARINE INSURANCE COMPANY,
Defendants-Appellees.

Appeal by Defendants Palm Harbor Homes, Inc. d/b/a Masterpiece Housing, American Home Assurance Company and Broadspire and cross-appeal by Plaintiff from opinion and award entered 1 August 2008 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 August 2009.

POISSON, POISSON & BOWER, PLLC, by Frederick D. Poisson, Jr., and E. Stewart Poisson, for Plaintiff.

McAngus Goulelock and Courie, PLLC, by Charles D. Cheney and Kristin L. Packard, for Defendant-Appellants.

STILES, BYRUM & HORNE, L.L.P., by Henry C. Byrum, Jr., and B. Jeanette Byrum, for Defendant-Appellees.

ERVIN, Judge.

Palm Harbor Homes, Inc., d/b/a Masterpiece Housing (Defendant Employer), American Home Assurance Company, and Broadspire (Defendants American Home and Broadspire will be collectively referred to throughout the remainder of this opinion as Defendant American Home)[1] appeal from an opinion and award of the North Carolina Industrial Commission (Commission) entered 1 August 2008. Plaintiff Glenn Locklear (Plaintiff) cross-appeals from the 1 August 2008 opinion and award as well. After a careful review of the record in light of the applicable law, we affirm the Commission's order.

On 11 March 1994, Defendant Employer hired Plaintiff to help construct manufactured homes, which were constructed inside a large warehouse. At the time that he began working for Defendant Employer, Plaintiff was twenty years old. On 28 August 2007, when this matter came on for hearing before Deputy Commissioner Phillip

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[1] As will be explained in greater detail below, the insurance carriers providing coverage to Defendant Employer changed during the time period that is relevant to the matters at issue in this case. In essence, American Home provided workers' compensation coverage to Defendant Employer for injuries that occurred in the latter part of 2006, while Defendant-Appellee St. Paul Fire and Marine Insurance Company provided coverage to Defendant Employer for injuries that occurred in the early part of 2004. Defendant Broadspire is a third-party administrator associated with the coverage provided by Defendant American Home. In many ways, the real dispute in this case hinges upon whether Defendant American Home, Defendant St. Paul, or both are responsible for providing compensation payments to Plaintiff, with the answer to that question depending on whether Plaintiff's condition on and after 2 October 2006 resulted from an earlier injury that he sustained on 10 January 2004, whether it was essentially independent of that earlier injury, or whether it was jointly caused by all of the injuries that Plaintiff sustained.

A. Baddour, III, Plaintiff was thirty-three years old and had worked for Defendant Employer for thirteen years. Among the tasks that Plaintiff performed for Defendant Employer were "utility[,]" "roofing[,]" and driving a "forklift[.]" Plaintiff always carried his "tool belt[,]" which was "loaded down with screws[,] wire nuts[,] hand tools, [a] hammer, wire cutters, [and] crimps." If Plaintiff worked on the roof of a home, he would also have "a hose and a nail gun[.]" In the event that he was involved in trimming, Plaintiff was required to carry "a brad gun[,] hose[,] [and a] ladder."

On 10 January 2004, while working for Defendant Employer, Plaintiff fell from a ladder and injured his right knee. On 19 January 2004, Dr. Joseph Zucker (Dr. Zucker) of Albemarle Orthopedic Services, evaluated Plaintiff's injured knee. On 21 January 2004, an MRI of Plaintiff's right knee was performed at Cabarrus Diagnostic Imaging, which revealed "a complete disruption of the anterior cruciate ligament, an extensive tear of the medial meniscus, and a strain of the lateral ligamentous complex." On 31 January 2004, Plaintiff underwent a "medial meniscal repair, a cruciate ligament reconstruction with a bone-tendon-bone allograft, and a partial debridement of the tear of the lateral meniscus." Defendant St. Paul Fire and Marine Insurance Company (Defendant St. Paul) provided Defendant Employer's workers compensation coverage during this period of time and paid Plaintiff's medical expenses and related indemnity compensation resulting from this surgery.

After the surgery, Plaintiff "continued having difficulty with his right knee[,] including pain, swelling, and episodes of the knee giving way." On 18 May 2004, Plaintiff again visited Dr. Zucker, reporting that, while "at work the previous week[,] he felt a popping sensation in his right knee and that his right knee had developed some swelling." Another MRI was taken of Plaintiff's right knee on 24 May 2004, which revealed a "tear of the posterior horn of the medial meniscus and a small tear of the posterior horn of the lateral meniscus."

On 17 June 2004, Plaintiff underwent a "right knee arthroscopy to repair his torn meniscus." Defendant St. Paul also paid Plaintiff's medical expenses and resulting indemnity compensation related to this surgery. Plaintiff returned to work for Defendant Employer "within approximately one month following his second right knee surgery." However, Plaintiff continued to "suffer from problems with his right knee, including pain and swelling."

Approximately one year later, on 9 June 2005, Plaintiff reported right knee pain relating to the 10 January 2004 injury to Dr. Glenn Perry (Dr. Perry)[2] and Physician's Assistant Scott Webster (Assistant Webster). Plaintiff told Dr. Perry that he "suffered a significant right knee buckling episode while walking on a flat surface." On 25 June 2005, an MRI of Plaintiff's right knee revealed that Plaintiff's "anterior cruciate ligament was

[2] Dr. Perry was the only physician who presented testimony in the proceedings before the Commission.

intact but that there was a recurrent tear of the medial meniscus." Plaintiff underwent surgery for a third time on 9 January 2006.

On 8 March 2006, Plaintiff returned to work for Defendant Employer without being subject to any restrictions. At this time, Plaintiff's job required him "to enter and exit modular homes to hang lights, install ceiling fans and electrical receptacles." Because the modular homes that Defendant Employer manufactures are constructed inside warehouses and transported from one location to another during various stages of the construction process, they are built on mechanical pushers, which are essentially floor joists covered with decking and placed upon wheels. The distance from the floor of the modular home to the floor of the warehouse ranged from "between 18 and 22 inches."

Plaintiff's right knee "gradually became worse and began to give out during the performance of his job duties." Plaintiff suffered from "increased pain, swelling and discomfort in his right knee." For that reason, Plaintiff would "regularly" visit the nurse's station at his workplace "to ice his right knee."

On 18 August 2006, Plaintiff performed work for Defendant Employer in the "Production Line and Electric Department." By that date, Defendant American Home had replaced Defendant St. Paul as Defendant Employer's workers' compensation carrier. According to Plaintiff, while "working on the utility line," he was required to "go anywhere in the plant" to do required work, including work as an "electrician[,]" a "plumber[,]" or a "roofer[.]" On this day, Plaintiff performed electrical work on a modular home. Plaintiff

stepped out of a modular home to either "get supplies" or "go to the next house," at which point his "knee gave out." As Plaintiff was carrying "boxes" of "recepticles," he "stepped the wrong way" and fell, hitting the "concrete hard." Plaintiff stated that employees "never go out of a house empty-handed." An incident report followed Plaintiff's fall.

On 19 September 2006, Plaintiff told Dr. Perry that his knee had recently "given out" and that "he noticed swelling in his right knee" while "working long weekends." Dr. Perry "was suspicious that [Plaintiff] had retorn the . . . remnant of the medial meniscus." Dr. Perry recommended an MRI arthrogram.

On 2 October 2006, Plaintiff carried a box containing electrical receptacles which weighed twenty pounds out of a modular home. As he stepped "approximately nineteen inches (19) out of [the] modular home [to the floor of the warehouse][,]" his right knee "gave out[,]" and he fell to the ground. Plaintiff "did not trip, and he did not step down awkwardly[;]" on the contrary, "[h]e was stepping down from the modular home as he had always done."

On 1 December 2006, Plaintiff underwent an arthrogram, which was suspicious for a subtotal or total rupture of his ACL reconstruction. According to Dr. Perry, the events that occurred on 18 August 2006 and 2 October 2006 could have produced the result disclosed by the 1 December 2006 arthrogram. In Dr. Perry's opinion, "most likely the trauma of the mis-step was the determining factor in tearing the graft" and constituted a "new injury." Dr. Perry did not believe that there was any way to tell

whether Plaintiff's knee would have gone out on 18 August 2006 and 2 October 2006 in the absence of the previous injury and declined to say that the 2 October 2006 injury was the natural consequence of the series of injuries that Plaintiff had sustained going back to 10 January 2004. In Dr. Perry's opinion, a misstep of nineteen to twenty inches, standing alone, could have torn a "perfectly normal ACL."

On 10 December 2007, the Deputy Commissioner entered an opinion and award finding that Plaintiff sustained a compensable injury by accident to his right knee on 10 January 2004; that Plaintiff did not sustain an injury by accident arising out of the course and scope of his employment on 2 October 2006; that Plaintiff's then-current condition was "a direct and proximate result of [his] original compensable injury by accident on [10 January 2004];" and that "Plaintiff is entitled to payment of compensation related to this condition by" Defendant St. Paul. Defendant Employer and Defendant St. Paul noted an appeal from the Deputy Commissioner's decision to the Full Commission on 14 December 2007. On 21 December 2007, Plaintiff noted an appeal from the Deputy Commissioner's decision to the Full Commission as well.

On 1 August 2008, the Full Commission entered an opinion and award reversing the Deputy Commissioner's decision. In its decision, the Full Commission found that "Plaintiff sustained an admittedly compensable injury by accident to his right knee on" 10 January 2004. In addition, the Full Commission stated that, "[i]n order for an injury to be compensable under the Workers

Compensation Act, it must be the result of an accident arising out [and] in the course of employment" and that "Plaintiff must show that the incident constituted an interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." Based on the application of this test, the Full Commission concluded that "[P]laintiff sustained an injury by accident [on 18 August 2006] arising out of and in the course of his employment when he stepped the wrong way while exiting out of a house that was 19 to 20 inches off the ground and landed wrong, falling to the ground." The Full Commission further concluded that, on 2 October 2006, "[P]laintiff sustained an injury by accident arising out of and in the course of his employment with defendant-employer when he fell to the ground while stepping a distance of approximately 10 to 20 inches from a mobile home without support and while wearing a 10-pound tool belt and while carrying a 20-pound box." Even if "[P]laintiff's injury . . . resulted from an idiopathic weakness of his knee which cause[d] his knee to give way," the Full Commission concluded that "this event would still constitute an injury by accident." In the event that "an injury is clearly attributable to an idiopathic condition of the employee, with no other factors intervening or operating to cause or contribute to this injury," the Full Commission recognized that no award should be given. However, "where the injury is associated with any risk attributable to the employment," the Full Commission opined that "compensation should be allowed, even though the employee may have suffered from an

idiopathic condition which precipitated or contributed to the injury." As a result, the Full Commission concluded that, "[e]ven if [P]laintiff's fall[s] [were] . . . due to an idiopathic condition, his employment, which required him to step down a distance of 19 to 20 inches without support and while wearing a 10-pound tool belt and while carrying a 20-pound box placed him at increased risk of injury from his idiopathic condition." According to the Full Commission, Plaintiff's condition as "diagnosed by Dr. Perry on [20 January 2007] proximately resulted from [P]laintiff's injury by accident on [18 August 2006], injury by accident on [2 October 2006], or a combination of both" and "was not the direct and natural consequence of his injury on" 10 January 2004. Thus, the Full Commission concluded that Plaintiff was entitled to receive compensation from Defendant American Home and that, to the extent that Defendant St. Paul had made any payments related to Plaintiff's compensation claim, it was entitled to reimbursement from Defendant American Home. From the Full Commission's opinion and award, Defendant Employer and Defendant American Home appeal and Plaintiff cross-appeals.

I. Standard of Review

"The Industrial Commission is the fact-finding body." *Hendrix v. Linn-Corriher Corp.*, 317 N.C. 179, 186, 345 S.E.2d 374, 379 (1986) (citing *Watkins v. City of Wilmington*, 290 N.C. 276, 280, 225 S.E.2d 577, 580 (1976)). "In considering factual issues, the Commission's responsibility is to judge the credibility of the witnesses and the weight to be given to their testimony." *Hendrix*,

317 N.C. at 186, 345 S.E.2d at 379 (citing *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683-84 (1982)). This Court's review of a Commission decision is limited to the consideration of two issues: "whether there was any competent evidence before the Commission to support its findings of fact and whether the findings of fact justify its legal conclusions and decision." *Buchanan v. Mitchell County*, 38 N.C. App. 596, 599, 248 S.E.2d 399, 401 (1978), *disc. review denied*, 296 N.C. 583, 254 S.E.2d 35-36 (1979) (citing *Inscoe v. Industries, Inc.*, 292 N.C. 210, 232 S.E.2d 449 (1977)).

II. Defendants' Appeal

A. Injury by Accident

First, Defendant Employer and Defendant American Home contend that the Commission erred by concluding that Plaintiff sustained an injury "by accident, arising out of and in the course of his employment on 18 August 2006 and on 2 October 2006" because this conclusion is not based on adequate findings of fact or supported by competent record evidence. After careful consideration of the Commission's decision in light of the evidentiary record and the applicable law, we disagree.

According to Defendant Employer and Defendant American Home, any injuries that Plaintiff sustained on 18 August 2006 and 2 October 2006 were not caused by an "accident" as that term is used in Chapter 97 of the North Carolina General Statutes. According to N.C. Gen. Stat. § 97-2(6), "'Injury and personal injury' shall mean only injury by accident arising out of and in the course of the

employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident." "[T]he statutory definition of the word injury is not synonymous with accident[;] [rather][,] [t]here must be some new circumstance not a part of the usual work routine in order to find that an accident has occurred." *Swindell v. Davis Boat Works, Inc.*, 78 N.C. App. 393, 396, 337 S.E.2d 592, 593-94 (1985), *disc. review denied and appeal dismissed,* 316 N.C. 385, 342 S.E.2d 908 (1986) (citing *Russell v. Pharr Yarns, Inc.*, 18 N.C. App. 249, 196 S.E.2d 571 (1973)). A compensable injury "under our Workmen's Compensation Law, [N.C. Gen. Stat. §] 97-1 *et seq.*, must result from an accident, which is to be considered as a separate event preceding and causing the injury, and the mere fact of injury does not of itself establish the fact of accident." *Bigelow v. Tire Sales Co.*, 12 N.C. App. 220, 222, 182 S.E.2d 856, 858 (1971).

"Our Supreme Court has defined the term 'accident' as used in the Workers' Compensation Act as 'an unlooked for and untoward event which is not expected or designed by the person who suffers the injury[;]' [t]he elements of an 'accident' are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Poe v. Acme Builders*, 69 N.C. App. 147, 149, 316 S.E.2d 338, 340, *disc. review denied*, 311 N.C. 762, 321 S.E.2d 143 (1984) (quoting *Adams v. Burlington Industries*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983) (internal quotations omitted)); *see also Harding v. Thomas & Howard Co.*, 256 N.C. 427, 428, 124 S.E.2d 109, 111 (1962)

(defining accident as "a result produced by a fortuitous cause"); *Davis v. Raleigh Rental Center*, 58 N.C. App. 113, 116, 292 S.E.2d 763, 766 (1982) (stating that "[u]nusualness and unexpectedness" are the "essence" of an accident).

1.18 August 2006 Injury

In this case, the Commission made the following finding of fact relating to Plaintiff's 18 August 2006 injury:

> Plaintiff reported that he stepped the wrong way while exiting out of a house that was 19 to 20 inches off the ground and landed wrong, falling to the ground. Plaintiff acknowledged experiencing increasing pain and swelling of his knee as a result of this incident.

According to the evidentiary record, Plaintiff was working with the "Production Line and Electric Department" on 18 August 2006. While "working on the utility line," he was subject to being required to "go anywhere in the plant" to perform needed job functions, including working as an "electrician[,]" a "plumber[,]" or a "roofer[.]" On the date in question, Plaintiff did electrical work on a modular home. As he stepped out of a modular home to "get supplies" or "go to the next house," his "knee gave out." Plaintiff was carrying "boxes" of "receptacles" when Plaintiff "stepped the wrong way" and fell, hitting the "concrete hard." Similarly, at the time that he visited Dr. Perry on 19 September 2006, Plaintiff reported that he had recently stepped out of a house and "landed wrong[.]"

2. 2 October 2006 Injury

The Commission found as fact with regard to Plaintiff's 2 October 2006 injury, that "plaintiff was performing electrical work

on a home under assembly" and "was wearing a tool belt weighing approximately 10 pounds and carrying a box of receptacles weighing approximately 20 pounds." The Commission also found that, "[a]s he exited the home . . . plaintiff stepped down approximately 19 to 20 inches, at which time his right knee buckled[;] [p]laintiff also rolled his right ankle and fell hard onto the concrete floor."

This finding of fact is supported by Dr. Perry's deposition, in which Dr. Perry responded to a question inquiring whether he had "an opinion as to why the knee would have given way stepping out of the doorway down a 19-inch drop" by stating:

> One [reason] is the trauma of just a misstep even something as trivial, unfortunately, as 20 inches could be enough to tear not only a reconstructed ACL but a normal ACL. One of my basketball players, if you happen to see the replay, simply took a misstep on a level surface and tore his cruciate ligament. So that can happen. . . . I believe that most likely the trauma of the misstep [Plaintiff took from the modular home] was the determining factor in tearing the graft.

In addition, Plaintiff's supervisor filled out an incident report based on information provided by Plaintiff in which he again stated that Plaintiff stepped the wrong way. According to Plaintiff, it was "an unusual event that I fell and got hurt."

3. Analysis

The evidence discussed above, with regard to both the 18 August 2006 and 2 October 2006 injuries, constitutes "competent evidence before the Commission [that] support[s] its findings of fact" that Plaintiff's injuries on 18 August 2006 and 2 October 2006, both of which resulted from a "misstep" as he exited a

modular home on which he had been working, were "accident[s]" – unlooked for and untoward events which are not expected or designed by the person. *Poe*, 69 N.C. App. at 149, 316 S.E.2d at 340. "If there is any evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary." *Porterfield v. RPC Corp.*, 47 N.C. App. 140, 144, 266 S.E.2d 760, 762 (1980) (citing *Willis v. Drapery Plant*, 29 N.C. App. 386, 224 S.E.2d 287 (1976)); *see also Cole v. Guilford County*, 259 N.C. 724, 727, 131 S.E.2d 308, 311 (1963) (stating that "[a] fall itself is usually regarded as an accident") (citing *Robbins v. Hosiery Mills*, 220 N.C. 246, 17 S.E.2d 20 (1941)). "An appellate court does not weigh the evidence in order to make new findings; rather, it is bound by the Commission's findings of fact when there is any evidence to support those findings, even though the evidence may well support contrary findings." *Timmons v. N.C. Dept. of Transp.*, 351 N.C. 177, 182, 522 S.E.2d 62, 65 (1999). As a result, we concluded that the evidentiary record supports the Commission's determination that both the 18 August 2006 and 2 October 2006 incidents constituted injuries by accident, so that Defendant Employer and Defendant American Home's assignments of error directed toward these aspects of the Commission's decision are overruled.

B. Accident Arising Out of Employment

Next, Defendant Employer and Defendant American Home contend that the injuries that Plaintiff sustained on 18 August 2006 and 2

October 2006 did not "arise out of his employment" as required by the provisions of Chapter 97 of the North Carolina General Statutes. Once again, after carefully reviewing the evidentiary record in light of the applicable law, we are compelled to disagree.

"Whether an accident arises out of the employment is a mixed question of fact and law, and the finding of the Commission is conclusive if supported by any competent evidence; otherwise, not." *Cole*, 259 N.C. at 726, 131 S.E.2d at 311.

> For an accident to arise out of the employment there must be some causal connection between the injury and the employment. When an injury cannot fairly be traced to the employment as a contributing proximate cause, or if it comes from a hazard to which the employee would have been equally exposed apart from the employment, or from the hazard common to others, it does not arise out of the employment.

Id., 259 N.C. at 726-27, 131 S.E.2d at 311 (citing *Lewter v. Enterprises, Inc.*, 240 N.C. 399, 82 S.E.2d 410 (1954)). Thus, the critical issue which must be resolved in order to adequately address this portion of Defendant Employer and Defendant American Home's challenge to the Commission's decision is whether the record adequately supports the Commission's finding that Plaintiff's injuries are causally connected to his employment or stemmed from a hazard to which Plaintiff would have been equally exposed had he never entered Defendant Employer's workforce.

In this case, Defendant Employer and Defendant American Home contend that, because the proximate cause of Plaintiff's injury was his "preexisting condition of a weakened and deranged knee which

gave out," Plaintiff's injury did not arise out of his employment. The record, however, contains ample evidence tending to show that Plaintiff's injury stemmed from his employment.

According to the record evidence, on 18 August 2006, Plaintiff, while performing work for Defendant Employer as an electrician, stepped out of a home "19 to 20 inches off the ground and landed wrong, falling to the ground" and hitting the "concrete hard." When Plaintiff "stepped the wrong way" and "landed wrong," his "knee gave out." At the time that he stepped out of the modular home, Plaintiff was carrying "boxes" of receptacles and intended to either "get supplies" or "go to the next house."

In addition, the evidentiary record reflects that, on 2 October 2006, Plaintiff performed electrical work on a modular home that was in the assembly process. At that time, he wore a tool belt that weighed approximately ten pounds and carried a box of receptacles weighing approximately twenty pounds. As he stepped from the modular home to the ground, which involved a drop of approximately twenty inches to the ground, he had a misstep and fell. Dr. Perry testified that the injury was most likely caused by "the trauma of the misstep[;]" that the injury was a "new injury[;]" and that, while the injury on 10 January 2004 could have been a "contributing" factor, the [missteps could] have torn a "perfectly normal ACL." Furthermore, the record contains evidence tending to show that, on 2 October 2006, Plaintiff wore his tool belt, carried boxes of receptacles, and stepped down twenty inches carrying such items that he used in connection with his employment.

In view of all of this information, including the undisputed evidence that, on both occasions Plaintiff was injured when he had a "misstep" when exiting a modular home, which required him to step down from a height in excess of a foot while carrying a material amount of employment-related equipment, the Commission was not compelled to conclude that Plaintiff "would have been equally exposed [to the risks associated with such activities] apart from [his] employment" and had ample evidentiary support for its conclusion that the injuries that Plaintiff sustained on both occasions were causally related to his employment.

As a result, we conclude that the record contains sufficient evidence to support the Commission's findings and conclusion that, with regard to injuries occurring on 18 August 2006 and 2 October 2006, there was a "causal connection between the injur[ies] and the employment" and that Plaintiff's injuries, in fact, arose out of his employment. For that reason, the associated assignments of error are overruled. *See Porterfield*, 47 N.C. App. at 144, 266 S.E.2d at 763 (stating that, "[i]f there is any evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary").

C. Natural Consequence; Intervening Cause

Next, Defendant Employer and Defendant American Home contend that the Commission erred by concluding that "Plaintiff's injuries are not the direct and natural consequence of his injury on 10

January 2004" on the grounds that the Commission's conclusion is not supported by the Commission's factual findings or by competent evidence of record. After carefully reviewing the record in light of the applicable law, we are unable to discern any error in the challenged conclusion.

"When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct." *Starr v. Charlotte Paper Co.*, 8 N.C. App. 604, 611, 175 S.E.2d 342, 347 (1970) (citing *Larson's Workmen's Compensation Law*, § 13.00). "[T]he aggravation of an injury or a distinct new injury is compensable '[w]hen the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct.'" *Heatherly v. Montgomery Components, Inc.*, 71 N.C. App. 377, 379-80, 323 S.E.2d 29, 30 (1984), *disc. review denied*, 313 N.C. 329, 327 S.E.2d 890 (1985) (citation omitted). An "intervening cause" in the context of the Workers' Compensation Act is an occurrence "entirely independent of a prior cause[;] [w]hen a first cause produces a second cause that produces a result, the first cause is a cause of that result." *Petty v. Transport, Inc.*, 276 N.C. 417, 426, 173 S.E.2d 321, 328 (1970) (citation omitted). In addition, where an employee's injury has been proven to be

compensable, additional medical treatment is presumed to be directly related to the compensable injury, with the employer having the burden of establishing that the treatment is not directly related to the compensable injury. *Reinninger v. Prestige Fabricators, Inc.*, 136 N.C. App. 255, 259, 523 S.E.2d 720, 723 (1999).

Even if the record evidence is "conflicting," *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 117, 530 S.E.2d 549, 553-54 (2000), our standard of review is "whether there was any competent evidence before the Commission to support its findings of fact and whether the findings of fact justify its legal conclusions and decision[.]" *Buchanan*, 38 N.C. App. at 599, 248 S.E.2d at 401. Appellate review is not another opportunity for the parties to relitigate and seek a more favorable result with disputed factual issues. Instead, our role in the process of adjudicating claims under the Workers' Compensation Act is simply to determine, in light of the applicable legal standards, whether the findings and conclusion that the Commission actually made have adequate evidentiary support and rest upon a correct understanding of applicable law.

In this case, Dr. Perry testified that Plaintiff's injuries were most likely caused by "the trauma of the misstep[;]" that the injuries were a "new injury[;]" and that, while the 10 January 2004 injury could have been a "contributing" factor, the type of missteps Plaintiff experienced could have torn a "perfectly normal ACL." Dr. Perry stated several times that, "unfortunately, . . .

[a misstep of] 20 inches could be enough to tear not only a reconstructed ACL but a normal ACL" and that, "most likely[,] the trauma of the misstep was the determining factor in tearing the graft[.]" Furthermore, Dr. Perry agreed that "to a reasonable degree of medical probability . . . that either the incident on August 18, 2006, the incident on October [2], 2006[,] or both of those incidents in combination caused the condition [Dr. Perry] diagnosed in January 2007."

As a result, even though there is evidence to the contrary, Dr. Perry's testimony is sufficient evidence to support the Commission's findings and conclusions that "Plaintiff's injuries are not the direct and natural consequence of his injury on 10 January 2004[.]" As a result, this assignment of error is overruled.

D. Idiopathic Injury

Finally, Defendant Employer and Defendant American Home contend that the Commission erred by concluding that "Plaintiff's employment placed him at an increased risk of injury from an idiopathic condition" on the grounds that this conclusion is not supported by adequate findings of fact or record evidence. Once again, after carefully scrutinizing the evidentiary record in light of the applicable law, we are compelled to disagree.

"[O]nce an activity, even a strenuous or otherwise unusual activity, becomes a part of the employee's normal work routine, an injury caused by such activity is not the result of an interruption of the work routine or otherwise an 'injury by accident' under the

Workers' Compensation Act." *Bowles v. CTS of Asheville*, 77 N.C. App. 547, 550, 335 S.E.2d 502, 504 (1985) (citations omitted). "It is insufficient as a matter of law to show only that in the past a regular activity caused no pain and that the same activity now causes pain." *Bowles*, 77 N.C. App. at 551, 335 S.E.2d at 504 (citing *Davis v. Raleigh Rental Center*, 58 N.C. App. 113, 292 S.E.2d 763 (1982); *Russell*, 18 N.C. App. 249, 196 S.E.2d 571). Instead, "[t]here must be a specific fortuitous event, rather than a gradual build-up of pain, in order to show injury by accident." *Bowles*, 77 N.C. App. at 551, 335 S.E.2d at 504 (citing *O'Mary v. Clearing Corp.*, 261 N.C. 508, 135 S.E.2d 193 (1964)).

"[W]here the accident and resultant injury arise out of both the idiopathic condition of the workman and hazards incident to the employment, the employer is liable. But not so where the idiopathic condition is the sole cause of the injury." *Hollar v. Furniture Co.*, 48 N.C. App. 489, 494-95, 269 S.E.2d 667, 671 (1980) (quoting *Cole*, 259 N.C. at 728, 131 S.E.2d at 311). "[T]he question that usually determines whether the injury is compensable is, did the employee's working conditions contribute to the fall and consequent injury or was the accident solely due to the employee's idiopathic condition which might have caused him to fall in his home with the same injurious results?" *Hollar*, 48 N.C. App. at 495, 269 S.E.2d at 671 (quoting *Cole*, 259 N.C. at 728, 131 S.E.2d at 312). "If it is the latter the employer is not liable, if the former he is liable." *Id.*

In this instance, the record evidence amply supports the Commission's findings and conclusions regarding the compensability of Plaintiff's injuries. More particularly, the record reflects that on both 18 August 2006 and 2 October 2006, Plaintiff performed electrical work on a modular home that was under construction; that, on both occasions, Plaintiff had to exit the modular home in order to perform other employment-related duties; that, in order to leave both modular homes, he had to step down approximately 20 inches from the floor of the modular home to the floor of the building in which the mobile home was being assembled; that, on both occasions, he wore or carried tools or equipment that he used in performing his job duties; and that, on both occasions, as he stepped out of the modular home, he either "landed wrong" or made a "misstep" and fell. According to Dr. Perry, the injuries that Plaintiff sustained were most likely caused by "the trauma of the misstep[;]" that the injury was a "new injury[;]" and that, while Plaintiff's 10 January 2004 injury could have been a "contributing" factor, incidents of missteps from elevations of nineteen to twenty inches could have torn a "perfectly normal ACL." As a result, we conclude that the evidence in the present record is sufficient to support the Commission's determination that Plaintiff's condition did not result solely from an idiopathic weakness in his knee and was, for that reason, compensable. As a result, this assignment of error is overruled.

III. Plaintiff's Appeal

A. Natural Consequence

On cross-appeal, Plaintiff first argues that the Commission erred by finding and concluding that Plaintiff's 18 August 2006 and 2 October 2006 injuries were not natural consequences of his 10 January 2004 injury. Plaintiff's argument differs from that advanced by Defendant Employer and Defendant American Home in that, unlike Defendant Employer and Defendant American Home, Plaintiff contends that his present condition is the result of all three injuries and that the Commission erred by not attributing at least part of his present condition to his 10 January 2004 injury. Based upon a careful review of the record in light of the relevant legal principles, however, we conclude that the Commission did not err in making this determination.

As we previously indicated, Dr. Perry testified that Plaintiff's injuries most likely resulted from "the trauma of the misstep[;]" that the injuries were "new injur[ies][;]" and that while the injury on 10 January 2004 could have been a "contributing" factor, the incidents could have torn a "perfectly normal ACL." In other words, when asked whether "the incident on [18 August 2006], the incident on [16 October 2006] or both of those incidents in combination caused the conditions [he] diagnosed in January, 2007," Dr. Perry responded, "[m]ost probably, that's correct." As a result, even though there is evidence that would support a contrary conclusion, we conclude that the record contains sufficient evidence upon which the Commission could base a finding and conclusion that "Plaintiff's injuries are not the direct and natural consequence of his injury on 10 January 2004[.]" For this

reason, we conclude that the Commission did not err by finding and concluding that 18 August 2006 and 2 October 2006 injuries were not natural consequences of his 10 January 2004 injury. This assignment of error is overruled.

B. Material Aggravation

Secondly, Plaintiff contends that the Commission erred by failing to find that Plaintiff's 2006 injuries were a material aggravation of his 10 January 2004 injury. After carefully reviewing the evidence in the record developed before the Commission, we disagree with Plaintiff's contention.

"[W]hen an employee afflicted with a pre-existing disease or infirmity suffers a personal injury by accident arising out of and in the course of his employment, and such injury materially accelerates or aggravates the preexisting disease or infirmity and thus proximately contributes to the death or disability of the employee, the injury is compensable, even though it would not have caused death or disability to a normal person." *Anderson v. Motor Co.*, 233 N.C. 372, 374, 64 S.E.2d 265, 267 (1951) (citation omitted). Although we agree that the record contains evidence that could be understood to support Plaintiff's contention that his 18 August 2006 and 2 October 2006 injuries were material aggravations of his 10 January 2004 injury, there is also evidence to the contrary. As we have noted on a number of occasions, Dr. Perry testified that Plaintiff's condition in January 2007 was most likely caused by "the trauma of the misstep[;]" that the injuries he observed on that occasion were "new injur[ies][;]" and that,

while Plaintiff's 10 January 2004 injury could have been a "contributing" factor, the events in which Plaintiff was involved in 2006 could have torn a "perfectly normal ACL." As a result, we conclude that the record contains evidence from which the Commission could determine that Plaintiff's 18 August 2006 and 2 October 2006 injuries did not involve a material aggravation of his 10 January 2004 injury. Thus, we conclude that the Commission did not err by failing to determine that the 18 August 2006 and 2 October 2006 injuries involved a material aggravation of his 10 January 2004 injury. For that reason, this cross-assignment of error is overruled.

AFFIRMED.

Judges MCGEE and JACKSON concur.

Report per Rule 30(e).