NO. COA09-1049

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2010

FRANK HALLMAN,
Employee, Plaintiff,

v.

From the North Carolina Industrial Commission
I.C. File No. 396614

NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
Employer, Self-insured,

(KEY RISK MANAGEMENT SERVICES,
Third Party Administrator)

Defendant.

Appeal by employer from opinion and award filed 31 March 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 December 2009.

Williams & Mills, P.A., by Reed G. Williams, for plaintiff-appellee.

Attorney General Roy Cooper, by Assistant Attorney General Marc X. Sneed, for defendant-appellant.

BRYANT, Judge.

Employee Frank Hallman filed an initial report of injury on 2 February 2004 and employer, the North Carolina Department of Correction[1] subsequently accepted compensability by filing a Form

[1] The caption of the opinion and award of the Full Commission gives the name of employer as "North Carolina Department of Corrections" and, thus, we use that spelling in the caption of this

60. On 26 March 2007, employer filed a Form 33 to request a hearing on whether employee's disability treatment was related to his compensable injury. Following a hearing, the deputy commissioner issued an opinion and award concluding that employee was totally disabled due to his compensable injury from 26 January 2004 to 8 April 2004, but had failed to establish on-going disability beyond 8 April 2004; and that employee had established the need for additional medical care for his depression which was exacerbated by the compensable injury. Employee and employer each appealed to the Full Commission, which subsequently affirmed the opinion and award of the deputy commissioner with substantial modifications. Significantly, the Full Commission ordered that employer continue to pay employee temporary total disability compensation until further order of the Commission. Employer appeals from the opinion and award entered 31 March 2009 by the Industrial Commission. We affirm.

Facts

The Full Commission's unchallenged findings of fact reveal the following: Employee was trained as a dentist, but stopped practicing dentistry in 1996 because of overwhelming depression. At the time employer hired him as a dentist in March 2003, employee was receiving Social Security disability benefits. Employee was taking advantage of a Social Security Administration program which permits disabled persons to return to work on a trial basis without

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Court's opinion. However, the proper name of employer is the North Carolina Department of Correction, without a final "s," as reflected in document submitted by employer.

jeopardizing their benefits. In May 2003, employee injured his back playing basketball with his son, and in August of that year, underwent back surgery. He returned to work in September, but this attempt proved unsuccessful and employee's doctor medically removed him from work. Employee returned to work in December 2003. By January 2004, employee estimated he had ninety-five percent improvement to his back. On 26 January 2004, employee fell on ice while getting out of his vehicle at work and sustained the lower back injury which is the basis of his present claim.

Employer presents two issues on appeal: whether the Full Commission erred in (I) not addressing whether employee was totally disabled as a result of his Parkinson's disease; and (II) concluding that employee is disabled as a result of his compensable injury. As discussed below, we affirm.

Standard of Review

On appeal from an award of the Industrial Commission, our review is limited to determining whether competent evidence supports the Commission's findings of fact and whether those findings support the Commission's conclusions of law. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998), *reh'ing denied*, 350 N.C. 108, 532 S.E.2d 522 (1999); *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 115, 530 S.E.2d 549, 552 (2000). Findings supported by competent evidence are conclusive on appeal even if there was evidence to support contrary findings. *Hedrick*

v. PPG Industries, 126 N.C. App. 354, 357, 484 S.E.2d 853, 856 *disc. review denied*, 346 N.C. 546, 488 S.E.2d 801 (1997).

I

Employer first argues the Commission erred in not addressing whether employee was totally disabled as a result of Parkinson's disease. We disagree.

"While the Commission is not required to make findings as to each fact presented by the evidence, it must find those crucial and specific facts upon which the right to compensation depends so that a reviewing court can determine on appeal whether an adequate basis exists for the Commission's award." *Johnson v. Southern Tire Sales & Serv.*, 358 N.C. 701, 705, 599 S.E.2d 508, 511 (2004). The three assignments of error brought forth in this argument purport to challenge findings 19, 20 and 22,[2] but employer actually argues that the Commission should have made additional findings about whether employee's unrelated Parkinson's disease, rather than his compensable lower back injury, could have been the cause of his total disability.

Here, the Commission made many findings about the opinions of at least five physicians and psychologists who treated or evaluated employee. These medical and psychological professionals disagreed

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[2] We note that the opinion and award of the Full Commission contains numbering errors in its findings of fact, so that there are two findings labeled with each of the following numbers: 12, 13, 14, 19 and 20. Because the parties discuss the text and content of the findings, we have not been impeded in our review of this matter. For clarity, we refer to the misnumbered findings as follows: finding 12(a) to refer to the first finding 12 in the opinion and award and finding 12(b) to refer to the second finding labeled "12" and so on.

about the exact causes of and contributors to employee's disability. Specifically, the Commission found that Dr. Laura Fleck, a neurologist, believed that employee suffered from Parkinson's disease, which was unrelated to his injury at work, and she did not release him to work as a dentist because of the central nervous system and other cognitive problems (findings 13 and 23). However, the Commission, in finding 19(b), found that

> The greater weight of medical evidence establishes that [employee's injury at work] exacerbated [his] preexisting psychological disorders. Dr. [J. Christopher] Caston, who has the longest treatment experience with [employee], both pre and post work related injury [sic], establishes that as a result of [employee's] preexisting mental conditions, [employee] experiences pain in greater degrees than persons without those conditions. In his opinion, which is accepted, the magnification of pain symptoms has a biological basis common to individuals who have the same mental disorders. Given [employee's] mental conditions, [employee's] pain, superimposed on his [sic] the residual physical symptoms form [sic] his work related [sic] injury and extensive preexisting mental disorders, prevents [employee] from returning to employment.

The Commission clearly considered the Parkinson's disease evidence given by Dr. Fleck and indeed made findings about it; however, the Commission chose to accept the opinion of Dr. Caston about the cause of employee's disability. We believe the Commission's findings were entirely sufficient, as they found "those crucial and specific facts upon which the right to compensation depends" and further provided a sufficient basis for this Court's review. *Johnson*, 358 N.C. at 705, 599 S.E.2d at 511. These assignments of error are overruled.

II

Employer next argues the Commission erred in concluding that employee was disabled as a result of his compensable injury. We disagree.

Essentially, employer contends that employee was already disabled when he began working for employer and that, therefore, he cannot be found to have become disabled again as a result of his compensable injury. Employer cites the following language from *Morrison v. Burlington Indus.* in support of this contention:

> (1) an employer takes the employee as he finds her with all her pre-existing infirmities and weaknesses. (2) When a pre-existing, *nondisabling, non-job-related* condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment or by an occupational disease so that disability results, then the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent. (3) On the other hand, when a pre-existing, nondisabling, non-job-related disease or infirmity eventually causes an incapacity for work without any aggravation or acceleration of it by a compensable accident or by an occupational disease, the resulting incapacity so caused is not compensable. (4) When a claimant becomes incapacitated for work and part of that incapacity is caused, accelerated or aggravated by an occupational disease and the remainder of that incapacity for work is not caused, accelerated or aggravated by an occupational disease, the Workers' Compensation Act of North Carolina requires compensation only for that portion of the disability caused, accelerated or aggravated by the occupational disease.

304 N.C. 1, 18, 282 S.E.2d 458, 470 (1981). However, that case did not consider whether disability determinations made by the Social Security Administration ("SSA") are binding on the Commission and

employer cites no other authority for that proposition. We conclude that the term "disabled" as used in *Morrison* referred solely to disability determinations made under our State's Workers' Compensation Act.[3] Here, the record indicates that the federal government, through the SSA, determined that employee was disabled as of 1996. However, the Commission was not bound by that determination but instead was required to make its own findings and conclusions on the relevant issues. *See Deese*, 352 N.C. at 115, 530 S.E.2d at 552 ("Under our Workers' Compensation Act, the Commission is the fact finding body.") (citation and quotation marks omitted). We overrule this assignment of error.

Affirmed.

Judges HUNTER, Robert C., and JACKSON concur.

Report per Rule 30(e).

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[3] We note that employee will not receive a double benefit for his disability status under both the Social Security Act and our Workers' Compensation Act. As the Supreme Court noted in *Morrison*, "[t]he Social Security Act requires an offset of Social Security benefits for workers' compensation benefits received." 304 N.C. at 15 n.3, 282 S.E.2d at 468 n.3 (citing 42 U.S.C. § 424a and 20 C.F.R. §§ 404-408).