NO. COA07-224

NORTH CAROLINA COURT OF APPEALS

Filed: 15 January 2008

BRUCE BOWLIN,
Employee-Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 407143

CORNERSTONE REALTY TRUST,
Employer-Defendant and

PMA GROUP,
Carrier-Defendant

Appeal by defendants from Opinion and Award entered 27 September 2006 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 September 2007.

Gary A. Dodd, for plaintiff-appellee.

Hedrick Eatman Gardner & Kincheloe, L.L.P., by M. Duane Jones, for defendants-appellants.

CALABRIA, Judge.

Cornerstone Realty Trust ("Cornerstone"), the employer, and PMA Group ("PMA"), the workers compensation carrier ("collectively defendants"), appeal from an Opinion and Award by the North Carolina Industrial Commission ("the Commission") finding employee Bruce Bowlin's ("plaintiff") claim compensable and awarding him benefits. We affirm.

The Commission's findings include the following: plaintiff was hired by Cornerstone on 2 August 1999 as a maintenance technician for Pinnacle Ridge Apartments in Asheville, North

Carolina. Plaintiff's duties included installation and repair of appliances, working on plaster walls, installing counter tops, performing plumbing, electrical work and miscellaneous carpentry work.

On 26 September 2003, plaintiff and a co-worker, Billy Joe Johnson ("Johnson"), were assigned to move a refrigerator to a second floor apartment. Due to a narrow stairwell, the refrigerator could not be transported to the second story by use of a hand truck so plaintiff and Johnson manually lifted the refrigerator and proceeded up the stairs. Plaintiff testified that he experienced a burning pain in his right groin area on the way up the stairs. Plaintiff continued working that day and ignored the pain "to get his job done." After completing his work, plaintiff testified he reported his injury to Kelly Spaulding ("Spaulding"), Cornerstone's marketing manager in the office at the time; Spaulding suggested he wait until the office manager returned from leave to complete the incident report. However, Spaulding testified plaintiff did not report his injury to her on 26 September 2003. The week after his injury, plaintiff left for a pre-scheduled vacation.

On 7 October 2003, plaintiff sought treatment for his pain. Dr. Scott Cassidy ("Cassidy"), an expert witness and plaintiff's treating physician, diagnosed plaintiff's injury. Specifically, plaintiff suffered from a right inguinal hernia and right inguinal ligament strain. Plaintiff never suffered from a hernia before the September incident.

Plaintiff scheduled a surgical consultation for 14 November 2003. On 7 November 2003, plaintiff suffered a "cerebrovascular accident involving his left temporoparietal area," which the doctors classified as a stroke. After this stroke, plaintiff was prescribed Coumadin, a blood-thinning medication. Plaintiff has a prior history of heart attacks: four in 1996, and one in 2000.

On 16 March 2004, plaintiff received a cardio-defibrillator implantation. Due to his cardiovascular problems, his hernia surgery was postponed.

Plaintiff underwent surgery to repair the hernia on 18 January 2005. For five days preceding the surgery, he did not take Coumadin due to the risk of bleeding during surgery.

After the surgery, plaintiff returned home and resumed taking Coumadin. The day after surgery, 19 January 2005, plaintiff lost some vision in his right eye. On 20 January 2005, plaintiff was readmitted to the hospital, complaining of a temporal bilateral headache and changes with his eyesight. His physicians determined he experienced a stroke, "due to having ended the taking of his blood thinning Coumadin." Cassidy testified the lack of Coumadin for five days prior to his hernia surgery could have caused plaintiff's headache and vision problems. Dr. Sanchez ("Sanchez") treated plaintiff on 20 January 2005. Sanchez testified the stroke plaintiff experienced in January was in a different area of his brain than the stroke he experienced in November of 2003, and, at the time of plaintiff's readmission to the hospital on 20 January 2005, he had sub-therapeutic blood levels of Coumadin. Sanchez opined that the discontinuation of Coumadin prior to plaintiff's surgery placed him at a high risk of experiencing a cardiovascular event and that the lower levels of Coumadin could have contributed to the stroke.

The Commission awarded plaintiff ongoing total disability payments of $360.18 per week beginning 7 October 2003, and continuing under further orders of the Commission, all medical expenses incurred as a result of the hernia, surgery and January 2005 stroke, including continuing Coumadin therapy, and a reasonable attorneys' fee of twenty-five percent. From this Opinion and Award, defendants appeal.

I. Compensability of Plaintiff's Hernia

Defendants argue that plaintiff did not prove a *prima facie* case necessary to qualify for compensation for a hernia and that the Commission erred in finding that plaintiff's hernia is a compensable injury because it relied on plaintiff's testimony which was uncorroborated and not credible. We disagree.

The standard of review of an appellate court on Opinions and Awards of the Commission is limited to whether there is competent evidence to support the findings of fact. *Porterfield v. RPC Corp.*, 47 N.C. App. 140, 144, 266 S.E.2d 760, 762 (1980). The Court "does not weigh the evidence, but may only determine whether there is evidence in the record to support the findings made by the Commission." *Porterfield*, 47 N.C. App. at 144, 266 S.E.2d at 762. "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*, 47 N.C.App. at 144, 266 S.E.2d at 762 (citation omitted). "The evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (citation omitted). "The Commission's conclusions of law are reviewed *de novo*." *Adams v. Metals USA*, 168 N.C. App. 469, 475, 608 S.E.2d 357, 361, *aff'd*, 360 N.C. 54, 619 S.E.2d 495 (2005) (citation omitted).

The employee has the burden of proving his claim is compensable. *Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003) (citation omitted). "To establish a *prima facie* case for compensation for a hernia pursuant to the Act, a claimant must prove: (1) an injury resulting in a hernia or rupture, (2) which appeared suddenly, (3) immediately following a work-related accident, and (4) did not exist prior to the accident." *Bondurant v. Estes Express Lines*,

Inc., 167 N.C. App. 259, 266, 606 S.E.2d 345, 349 (2004) (internal quotes omitted) (citation omitted).

A review of the record reveals that plaintiff presented sufficient evidence of a compensable injury. Dr. John Li ("Li"), plaintiff's surgeon, testified that he examined plaintiff prior to surgery and was of the opinion that "lifting the refrigerator caused this hernia." Plaintiff testified he lifted the refrigerator pursuant to a work order, experienced a burning pain while lifting the refrigerator, and prior to the injury he had never suffered from a hernia before.

Although defendants argue that plaintiff's testimony was not corroborated, the Commission is the sole judge of the weight and credibility of testimony. *Adams v. AVX Corp.*, 349 N.C. at 681, 509 S.E.2d at 414. Viewing the evidence in the light most favorable to the plaintiff, the evidence is sufficient to support a finding that the hernia resulted from a work-related accident and is therefore a compensable injury. *Id.* We overrule this assignment of error.

Next, we address whether the findings of fact support the conclusions of law. Defendants contest the conclusion of law that the hernia is compensable. We conclude these findings are sufficient to support a conclusion of law that the injury was compensable and plaintiff is entitled to benefits.

II. Compensability of Plaintiff's Stroke

Defendants contend that the Commission erred in finding that plaintiff's cardiovascular stroke on 20 January 2005 was a "direct and natural result" of a compensable injury. Defendants argue that because the hernia is not compensable, the stroke is also not compensable. Because we affirm the Commission's determination that the hernia is compensable, we conclude this argument is without merit.

Defendants also argue that plaintiff did not meet his burden of showing "the cerebral vascular event" is causally related to the hernia. Defendants attack this conclusion on the grounds that the medical testimony is speculative and does not support such a conclusion. We disagree. "A subsequent injury to an employee, whether an aggravation of the original injury or a new and distinct injury, is compensable only if it is the direct and natural result of a prior compensable injury." *Cooper v. Cooper Enters., Inc.*, 168 N.C. App. 562, 564, 608 S.E.2d 104, 106 (2005) (quotation omitted) (citation omitted). "An injury is not compensable, however, if it is the result of an independent intervening cause attributable to claimant's own intentional conduct." *Id.* (citation and internal quotes omitted). Cases involving complex medical questions must be addressed by an expert, who can give competent opinion testimony as to causation. *Click v. Freight Carriers*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980). "The opinion of a physician is not rendered incompetent merely because it is based wholly or in part on statements made to him by the patient in the course of treatment or examination." *Adams v. Metals USA*, 168 N.C. App. at 476, 608 S.E.2d at 362 (citation omitted). "Could" or "might" expert testimony has been deemed competent to prove causation. *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 233, 538 S.E.2d 912, 916 (2000). However, "when there is additional evidence or testimony showing the expert's opinion to be a guess or mere speculation," "could" or "might" expert testimony is insufficient to support a causal connection. *Id.* "[A]n expert's speculation is insufficient to establish causation." *Holley v. ACTS, Inc.*, 357 N.C. 228, 234, 581 S.E.2d 750, 754 (2003) (citation and internal quotes omitted). The degree of a doctor's certainty goes to the weight of his testimony, which is the duty of the Commission and not this court. *Adams v. Metals USA*, 168 N.C. App. at 483, 608 S.E.2d at 365 (citations omitted).

Defendants cite *Holley v. Acts*, *supra* in support of their argument. In *Holley*, the employee injured her leg at work when she twisted it. 357 N.C. at 229-30, 581 S.E.2d at 751. She was diagnosed with a pulled calf muscle. 357 N.C. at 230, 581 S.E.2d at 751. Later her pain increased, and the doctor determined she had deep vein thrombosis ("DVT"). 357 N.C. at 230, 581 S.E.2d at 751-52. The Commission found that her DVT was a result of her calf injury and therefore a compensable work injury; one commissioner dissented. 357 N.C. at 230, 581 S.E.2d at 752. A divided panel of the Court of Appeals affirmed and our Supreme Court reversed. 357 N.C. at 231, 581 S.E.2d at 752. The Supreme Court held that the medical testimony was too speculative to establish a causal connection between the calf injury and the DVT. 357 N.C. at 233-34, 581 S.E.2d at 753. Notably, one doctor testified that "90 percent or greater" of his DVT patients never suffer an injury prior to developing DVT, that "[i]t's just a galaxy of possibilities." *Holley*, 357 N.C. at 233, 581 S.E.2d at 753. Another doctor stated, "I am unable to say with any degree of certainty" whether the work related injury is related to the DVT, and that "I don't really know what caused the DVT." *Holley*, 357 N.C. at 233, 581 S.E.2d at 754. The Supreme Court found that the "entirety of causation evidence before the Commission failed to meet the reasonable degree of medical certainty standard necessary to establish a causal link" to support a finding that the DVT resulted from a compensable injury. 357 N.C. at 234, 581 S.E.2d at 754. We find the case at bar to be distinguishable from *Holley*.

The Commission heard testimony from Li that stopping the Coumadin five days prior to surgery was standard. Sanchez testified stopping the Coumadin before surgery was to prevent the blood from becoming too thin during surgery. Cassidy testified that the decreased dose of Coumadin could have contributed to the stroke. Sanchez testified that plaintiff had an increased risk or "higher risk" of stroke without the Coumadin, that "being off the Coumadin . . . would

certainly increase" plaintiff's risk for a stroke, and that plaintiff's damage from the January 2005 stroke was permanent and he would probably have to continue Coumadin for the rest of his life. (Emphasis added).

Although plaintiff had experienced strokes in the past, the doctors' opinions concerning plaintiff's January 2005 stroke and the cessation of the anti-stroke medication, which was proximately caused by plaintiff's hernia surgery, are sufficient to support the Commission's findings that the stroke was a direct result of a compensable injury. The fact that the doctors used language such as "could" or "might" goes to their degree of certainty, which is "a duty for the Commission" to resolve. *Adams v. Metals USA*, 168 N.C. App. at 483, 608 S.E.2d at 365. Unlike in *Holley*, no additional testimony supports the defendants' contention that the doctor's opinions are "mere speculation." *Young,* 353 N.C. at 233, 538 S.E.2d at 916. We conclude that the evidence, viewed in the light most favorable to the plaintiff, supports the Commission's findings and such findings in turn support its conclusion of law that the January 2005 stroke occurred as a direct and natural result of the hernia. There is competent evidence to support the finding that plaintiff's hernia is compensable.

Affirmed.

Judges McCULLOUGH and STEPHENS concur.

Report per Rule 30(e).