

Reversed + Remanded

Chair, Mauretic

Concurring: Ballance  
Bolch

NO. COA00-730

NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2001

VIVIAN S. KNIGHT,  
Employee,  
Plaintiff,

v.

ABBOTT LABORATORIES,  
Employer,

SELF-INSURED (KEMPER),  
Defendants.

North Carolina  
Industrial Commission  
I.C. File No. 431374

Appeal by plaintiff from opinion and award filed 13 January 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 February 2001.

Law Offices of George W. Lennon, by George W. Lennon and Michael W. Ballance, for plaintiff appellant.

Brooks, Stevens & Pope, P.A., by Michael C. Sigmon and Joy H. Brewer, for defendant appellees.

SMITH, Judge.

The plaintiff, Vivian S. Knight, was employed by defendant Abbott Laboratories as a machine equipment operator. Plaintiff's supervisor was Fred Fuller. On 25 March 1994, plaintiff had a confrontation with Fuller regarding vacation time. Plaintiff had requested two days of vacation before the Easter holiday. However, Fuller allowed another employee with less seniority than plaintiff to take the vacation days plaintiff had requested. Under company

policy, plaintiff was entitled to select the vacation days based on her seniority. Only one person from plaintiff's work crew was allowed vacation at any one time.

Plaintiff went to Fuller's office to speak with him regarding his decision about the vacation days she had requested. Fuller arose from his desk, spoke to plaintiff in a loud, angry voice, and waved his hands and fingers in her face. Fuller then slammed the door to his office. Plaintiff left the office trembling and in tears to return to her workstation. Shortly thereafter, Fuller came to plaintiff's workstation and called to her in a loud voice. He then told her he would give her the vacation day she had requested.

Following the confrontation, plaintiff was upset. She broke out in hives and was sobbing uncontrollably. When her shift ended, plaintiff went directly to the office of Dr. James Bryant, her family physician. Dr. Bryant gave her a prescription for Xanax and referred her to Dr. Soong Lee, a psychiatrist, and Dr. Victor Mallenbaum, a psychologist, for treatment.

On 5 April 1994, plaintiff was admitted into Coastal Plain Hospital, a psychiatric hospital, with diarrhea, nausea, vomiting, stomach upset, cramps, and because she was unable to eat. Dr. Lee saw her in psychiatric consultation on 8 April 1994. Dr. Lee's initial impression was that plaintiff was suffering from acute post-traumatic stress syndrome. On 13 May 1994, plaintiff was again admitted to Coastal Plain Hospital. Dr. Lee diagnosed her with major depression and acute post-traumatic disorder. Plaintiff

was discharged on 20 May 1994.

Plaintiff attempted to return to work on two occasions. On 8 March 1995, "the first occasion, defendant sent her home because plaintiff could not sit up or keep her eyes open due to the medication she was taking. Defendant determined that plaintiff was "totally unable to work." On the second occasion, defendant would not let plaintiff perform her job duties because she was again incapacitated when she reported for work. Defendant stated that plaintiff was "incoherent, drowsy and could not keep her eyes open." Plaintiff was then terminated from her employment with defendant.

On 28 July 1998, Deputy Commissioner Mary Moore Hoag entered an opinion and award concluding that plaintiff had proven by a preponderance of the evidence that she "suffered a psychological injury by accident when faced with the unexpected and sudden confrontation with her supervisor." Accordingly, plaintiff was awarded permanent total disability compensation. On 13 January 2000, the Full Commission entered an opinion and award reversing the deputy commissioner's decision and denying plaintiff's claim. Plaintiff appealed.

We first consider whether the Industrial Commission's findings of fact support their conclusions of law. In one finding of fact, the Commission found that plaintiff was "hospitalized . . . as a result of emotional problems from the incident." (Emphasis added.) On the other hand, the Commission also found as fact that "the events of March 25, 1994, did not cause plaintiff's psychological

problems." (Emphasis added.) The Commission's findings of fact are inconsistent and contradictory and do not support its conclusions of law. Accordingly, the opinion and award of the Industrial Commission is vacated and the case is remanded for redetermination. See *Neal v. Leslie Fay, Inc.*, 78 N.C. App. 117, 121, 336 S.E.2d 628, 630 (1985); and *Grant v. Burlington Industries, Inc.*, 77 N.C. App. 241, 249, 335 S.E.2d 327, 333 (1985). Concluding as we do that the Commission's findings are contradictory and thus insufficient, we do not reach plaintiff's remaining assignments of error.

Reversed and remanded.

Judge BIGGS concurs.

Judge WALKER concurs with separate concurring opinion.

Report per Rule 30(e).

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WALKER, Judge, concurring.

The Industrial Commission found the following in part:

11. Plaintiff required psychiatric hospitalization approximately four weeks after the incident. She also was hospitalized at Nash General Hospital as a result of emotional problems from the incident . . . .

This finding is identical to the finding by the deputy commissioner who concluded plaintiff suffered a compensable psychological injury by accident arising out of this confrontation with her supervisor. Yet, the Industrial Commission determined that plaintiff did not suffer a compensable injury.

I agree that the findings are contradictory. The Industrial Commission should exercise care in adopting findings of the deputy commissioner when a different conclusion is reached.