

Affirmed
Author: Riggsbee
Concurring: Sellers
Bolch

NO. COA00-798

NORTH CAROLINA COURT OF APPEALS

Filed: 18 September 2001

HENRY RANDALL REINNINGER

v.

From the North Carolina
Industrial Commission
Nos. 432839 & 506658

PRESTIGE FABRICATORS, INC., and
KEY RISK MANAGEMENT SERVICES

Appeal by plaintiff from an opinion and award entered 11 April 2000 by Commissioner Renee C. Riggsbee of the North Carolina Industrial Commission. Heard in the Court of Appeals 16 May 2001.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for plaintiff-appellant.

Teague, Rotenstreich & Stanaland, by Michael D. Holt, for defendants-appellees.

THOMAS, Judge.

Plaintiff, Henry Randall Reininger, appeals from an 11 April 2000 opinion and award of the North Carolina Industrial Commission (Commission) denying his claim for compensation and medical treatment for an alleged injury to his lower back. Plaintiff sets forth one assignment of error.

For the reasons discussed herein, we affirm the Commission's opinion and award.

We note that this is the second time this case is before us. On 30 December 1999, in *Reininger v. Prestige Fabricators, Inc.*, 136 N.C. App. 255, 523 S.E.2d 720 (1999), we remanded the matter to the Commission as it was unclear whether the burden of proof had

FILED
01 SEP 18 AM 7:09
CLERK OF NORTH CAROLINA
COURT OF APPEALS

been inappropriately shifted to plaintiff. On remand, the Commission, in an opinion and award filed 11 April 2000, concluded defendants had the burden of proof to establish that plaintiff's medical problems stem from a prior compensable injury. The Commission also concluded that defendants met their burden. Plaintiff now appeals that decision.

By his first and only assignment of error, plaintiff argues the Commission erred by continuing to inappropriately place the burden of proof on plaintiff, in violation of our previous holding. We disagree.

The burden of proof rests with the employer in establishing whether subsequent medical problems of an employee were causally related to a prior compensable injury. *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 485 S.E.2d 867 (1997). The employer need only carry such burden by the greater weight or preponderance of the evidence. *Hardin v. Motor Panels, Inc.*, 136 N.C. App. 351, 524 S.E.2d 368, rev. denied, 351 N.C. 473, 543 S.E.2d 488 (2000).

In judicially reviewing the opinion and award of the Commission, this Court determines as a matter of law whether the finding of facts support the Commission's conclusions, and whether they justify the awards. *McRae v. Wall*, 260 N.C. 576, 578, 133 S.E.2d 220, 222 (1963). The Commission's findings will not be disturbed on appeal if they are supported by competent evidence even if there is contrary evidence in the record. *Peoples v. Cone Mills Corp.*, 316 N.C. 426, 432, 342 S.E.2d 798, 803 (1986). However, the Commission's conclusions of law are reviewable *de novo*

by this Court. See *Grantham v. R.G. Barry Corp.*, 127 N.C.App. 529, 491 S.E.2d 678 (1997), *rev. denied*, 347 N.C. 671, 500 S.E.2d 86 (1998).

In its finding of fact #24, the Commission specifically delineated that it had given plaintiff the benefit of the Parsons presumption and defendants had successfully rebutted the presumption by substantial evidence. Defendant contends that because the Commission did not take new evidence of medical treatment, or lack thereof, the Commission had insufficient evidence to make such a finding. Our review of the record, however, demonstrates that defendants have presented substantial evidence to show plaintiff's alleged injury was not related to his previous compensable injuries.

Plaintiff's own testimony, in fact, revealed he had told his employer the injury was not work related. Moreover, there was evidence plaintiff appeared at a doctor's office "stooped over" with a cane, but without actually using the cane. One doctor noted plaintiff's symptoms were "getting completely and totally out of control with little in the way of clinical findings."

Consequently, there is sufficient competent evidence to support the Commission's findings and conclusions. We therefore reject plaintiff's assignment of error and affirm the Commission's determinations.

AFFIRMED.

Judges WALKER and MCCULLOUGH concur.

Report per Rule 30(e).