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NO. COA99-892

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2000

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IN THE OFFICE OF
CLERK COURT OF APPEALS
OF NORTH CAROLINA

PHYLLIS HUNTER MOORE,
Employee,
Plaintiff;

v.

North Carolina
Industrial Commission
I.C. No. 445081

CHARLOTTE MECKLENBURG HOSPITAL
AUTHORITY,
Employer;

SELF-INSURED (Trigon
Administrators),
Defendant.

Appeal by plaintiff from opinion and award filed 5 February 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 April 2000.

Pamela A. Hunter for plaintiff-appellant.

Stiles Byrum & Horne, L.L.P., by Mark O. Crowther, for defendant-appellee.

GREENE, Judge.

Phyllis Hunter Moore (Plaintiff) appeals from an opinion and award of the North Carolina Industrial Commission (Commission) denying her claim for compensation arising out of an alleged occupational disease.

Plaintiff presented evidence tending to show she began her employment with the Charlotte-Mecklenburg Hospital Authority (Defendant) in 1977 as a nurse's aide. In late 1979, Plaintiff began working as a "unit secretary" in Defendant's hospitals. In

this position, she performed secretarial duties such as typing, filing, entering data into a computer, assembling patient charts, answering telephones, monitoring and answering the patient call bell system, making photocopies and deliveries, and operating an Addressograph machine. On an average day, Plaintiff would spend four or four-and-one-half hours entering data using a computer keyboard. On or about 15 April 1994 and again on 28 April 1994, Plaintiff began to experience numbness in her hands and fingers. Plaintiff was diagnosed with carpal tunnel syndrome of both wrists. After undergoing surgery, Plaintiff was released to return to work on 12 October 1994. Plaintiff returned to work but subsequently stopped working on or about 14 May 1995 because of pain in her hands and right shoulder. She has not worked since that date.

The parties stipulated into evidence Plaintiff's medical records and a letter from Plaintiff's treating physician, Forney Hutchinson, III, M.D. (Dr. Hutchinson). Dr. Hutchinson stated in his opinion "it is definitely possible that [Plaintiff's carpal tunnel syndrome condition in both hands] is related to her job which requires almost continual typing." Other than Plaintiff's medical records, no medical evidence was received.

Plaintiff's supervisor Cynthia Lindsey (Lindsey) testified on behalf of Defendant that on a typical day, a unit secretary in Plaintiff's unit would type for three hours, and the typing would not be constant but would be interrupted by telephone calls and other matters. Defendant's corporate safety manager Towanna Caldwell (Caldwell) testified by deposition that in observing a

third-shift unit secretary perform her job, she did not observe constant typing. Caldwell also testified a third-shift secretary, such as Plaintiff, did not perform as much data entry as a first- or second-shift secretary.

The Commission found and concluded Plaintiff failed to prove by competent, credible and convincing evidence that any condition from which she suffers is characteristic and peculiar to her employment with Defendant, that the condition is not an ordinary disease of life to which the general public is equally exposed, and that she was placed at an increased risk of developing the condition. The Commission denied Plaintiff's claim.

The dispositive issues are whether: (I) there is competent evidence to support the Commission's findings of fact and conclusions of law that Plaintiff did not meet her burden of proving she sustained a compensable occupational disease; and (II) the Commission erred by holding its hearing without having all of the Plaintiff's medical records in its file at the time of the hearing.

I

Plaintiff argues she met her burden of proving she sustained a compensable occupational disease through: (1) the deposition testimony of Caldwell that carpal tunnel syndrome "[c]ould be" peculiar to data entry clerks; and (2) Dr. Hutchinson's letter indicating that "it is definitely possible" her condition was related to her job. We disagree.

A Plaintiff must prove three elements in order to establish a claim for a compensable occupational disease under N.C. Gen. Stat. § 97-53(13): (1) the disease must be characteristic of persons engaged in the particular trade or occupation of the plaintiff; (2) the disease must not be an ordinary disease of life to which the general public is equally exposed; and (3) a causal relationship exists between the disease and the plaintiff's employment. *Hansel v. Sherman Textiles*, 304 N.C. 44, 52, 283 S.E.2d 101, 106 (1981).

"The plaintiff in a workers' compensation case has the burden of proving the causal connection by expert medical testimony which may be based either on 'personal knowledge or observation or on information supplied him by others, including the patient.'" *Beaver v. City of Salisbury*, 130 N.C. App. 417, 421, 502 S.E.2d 885, 888 (1998) (quoting *Booker v. Medical Center*, 297 N.C. 458, 479, 256 S.E.2d 189, 202 (1979)), *disc. review improvidently allowed*, 350 N.C. 376, 514 S.E.2d 89 (1999). "A mere possibility [of a causal relationship between a disease and the employment] is neither 'substantial' nor sufficient" to establish the disease is occupational. *Walston v. Burlington Industries*, 304 N.C. 670, 679, 285 S.E.2d 822, 828, *amended*, 305 N.C. 296, 285 S.E.2d 822 (1982). As the finder of fact, the Commission is the sole judge a witness' credibility and may reject or accept any or all of a witness' testimony. *Watkins v. City of Asheville*, 99 N.C. App. 302, 303, 392 S.E.2d 754, 756, *disc. review denied*, 327 N.C. 488, 397 S.E.2d 238 (1990).

In this case, Caldwell testified carpal tunnel syndrome "could

be" characteristic of or peculiar to the occupation of data entry operator. The only medical evidence concerning causation is Dr. Hutchinson's letter in which he indicates it is "possible" Plaintiff's condition was caused by her employment. Dr. Hutchinson's opinion was based upon Plaintiff's statement that her job involved continuous typing. Caldwell and Lindsey, however, testified Plaintiff's job did not require continuous typing. Further, there is no evidence in the record that carpal tunnel syndrome is a disease to which the general public is not equally exposed.

Plaintiff, therefore, did not meet her burden of proving her occupational disease was compensable, because the evidence did not demonstrate her carpal tunnel syndrome is a disease to which the general public is not equally exposed, and the requisite causal connection between Plaintiff's diseases and her employment, as required by N.C. Gen. Stat. § 97-53(13), was not sufficiently shown by Dr. Hutchinson's letter. The Commission, thus, was correct in finding and concluding that the evidence is insufficient to establish Plaintiff's condition is a compensable occupational disease.

II

Plaintiff also contends the Commission erred by holding its hearing without having all of Plaintiff's medical records in its file at the time of the hearing. We disagree.

Our review of the record discloses the Commission stated in its opinion and award that it "reviewed the award based upon the

record of the proceedings before the deputy commissioner," which included a packet of stipulated medical records. In addition, Plaintiff acknowledged in a motion for a rehearing before the Commission that the Commission had located the missing medical records. The Commission, thus, had the records at the time it rendered its decision. Plaintiff, therefore, has not shown prejudice.

Affirmed.

Judges EDMUNDS and SMITH concur.

Report per Rule 30(e).