

NO. COA00-216

NORTH CAROLINA COURT OF APPEALS

Filed: 29 December 2000

DARRYL MCLAUGHLIN,
Employee,
Plaintiff-Appellant,

v.

BLACK & DECKER,
Employer,
CIGNA INSURANCE COMPANY,
Carrier,
Defendants-Appellees.

North Carolina
Industrial Commission
I.C. No. 453126

Appeal by plaintiff from opinion and award entered 18 August 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 December 2000.

Eller and Mallard, by Sanya T. Eller, for plaintiff-appellant.

Teague, Campbell, Dennis & Gorham, L.L.P., by Gregory M. Willis, for defendants-appellees.

FULLER, Judge.

Plaintiff, a thirty-four year old male, began working for defendant Black and Decker in 1987 as a temporary employee, and became a permanent employee in 1988. As part of his duties plaintiff operated bonding machines. The bonding machines placed a coating over the wires of various appliances by heating the wiring and then dipping the wiring into a powder, which formed a coating over the wires. The bonding machine's process created dust. Other chemicals also were used by defendant in its manufacturing process, and some of these chemicals became airborne

as well.

In 1993, plaintiff began noticing that he was having shortness of breath and tightness in his chest. In January 1994, defendant was diagnosed with sarcoidosis. Sarcoidosis is a disease of the immune system which predominately affects the lungs. Plaintiff was taken out of work and has not returned to work since.

Plaintiff filed a claim with the Industrial Commission and a hearing was held on 24 April 1998. On 30 December 1998, Deputy Commissioner George T. Glenn, II, entered an opinion and award denying plaintiff's claim. The Deputy Commissioner found that plaintiff failed to prove that sarcoidosis is an occupational disease, and that plaintiff failed to prove that his disease is related to his employment. On 18 August 1999, the Full Commission entered an opinion and award affirming the Deputy Commissioner's decision. Plaintiff appeals.

Plaintiff's sole argument on appeal is that the Industrial Commission erred by failing to find that he suffers from an occupational disease. Plaintiff argues that he has established all the elements necessary to receive benefits for an occupational disease. We disagree. "To establish a right to workers' compensation benefits for an occupational disease under N.C. Gen. Stat. §97-53(13) (1999), the employee must show: (1) the disease is characteristic of individuals engaged in the particular trade or occupation in which the claimant is engaged; (2) the disease is not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or

occupation; and (3) there is a causal relationship between the disease and the claimant's employment." *Hardin v. Motor Panels, Inc.*, 136 N.C. App. 351, 354, 524 S.E.2d 368, 371, disc. review denied, 351 N.C. 473, ___ S.E.2d ___ (2000). Although it is undisputed that plaintiff suffers from sarcoidosis, plaintiff has failed to establish the requisite causal relationship between the disease and his employment.

Plaintiff's expert, Dr. Karen Smith, testified that the dust conditions at defendant's plant could cause a worsening of plaintiff's condition. However, Dr. Smith also testified that the cause of sarcoidosis is unknown, and that any inhalant could aggravate the condition. Dr. Smith further testified that she was not familiar with the dust content at defendant's plant, and stated that she "would not have any way to know" whether any irritation that plaintiff suffered as a result of dust at work was greater than any irritation plaintiff may have suffered from activities outside of work, such as mowing the lawn. On this issue, the Industrial Commission found that it was unclear from the evidence whether the disease from which plaintiff suffers was caused by the conditions of his employment. Based on these findings, the Commission concluded that plaintiff failed to prove that sarcoidosis is an occupational disease or that plaintiff's condition is related to his employment.

The findings of fact made by the Industrial Commission are conclusive on appeal if supported by any competent evidence. See *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). The Court's review is limited to determining "whether there was competent evidence before the Commission to support its findings and . . . whether such findings support its legal conclusions." *McLean v. Roadway Express*, 307 N.C. 99, 102, 296 S.E.2d 456, 458 (1982). After careful review of the record and briefs, we hold that there is competent evidence in the record to support the Commission's findings that plaintiff failed to establish a causal relationship between the disease and his occupation. "[E]vidence on causation 'must indicate a reasonable scientific probability that the stated cause produced the stated result.' Evidence is insufficient on causation if it 'raises a mere conjecture, surmise, and speculation.'" *Phillips v. U.S. Air, Inc.*, 120 N.C. App. 538, 542, 463 S.E.2d 259, 262 (1995) (quoting *Hinson v. National Starch & Chem. Corp.*, 99 N.C. App. 198, 202, 392 S.E.2d 657, 659 (1990)), *aff'd per curiam*, 343 N.C. 302, 469 S.E.2d 552 (1996). The testimony of plaintiff's expert failed to indicate a reasonable scientific probability that plaintiff's employment produced the disease. This finding supports the conclusion of law that plaintiff's claim is not compensable. Therefore, the opinion and award of the Industrial Commission is affirmed.

Affirmed.

Judges GREENE and WALKER concur.

Report per Rule 30(e).