NO. COA08-610

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

DEMETRESS JOHNSON, Widow of
JOHNNY JAMES JOHNSON,
Deceased,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 455846

THOMASVILLE FURNITURE
COMPANY,
Employer,
Self-Insured
Defendant.

Appeal by plaintiff from the Opinion and Award of the North Carolina Industrial Commission entered 4 January 2008. Heard in the Court of Appeals 17 November 2008.

Gray Newell, L.L.P., by Angela Newell Gray, for employee-plaintiff.

Orbock Ruark & Dillard, P.C., by Barbara E. Ruark, for employer-defendant.

MARTIN, Chief Judge.

Plaintiff appeals from an Opinion and Award of the North Carolina Industrial Commission denying her claim for compensation, under the North Carolina Workers' Compensation Act, for the death of her husband, Johnny Johnson, as the alleged result of an occupational disease as a consequence of his employment with defendant-employer. We affirm.

Johnny Johnson worked for employer-defendant Thomasville Furniture, Inc. from 1965 until approximately a month before his death in April 2004. At the time of his death, Johnson was a salaried supervisor in defendant's Rub and Pack Department, the final manufacturing department through which furniture passed prior to shipment. Evidence before the Commission tended to show that Johnson began experiencing fatigue, weight loss, swelling, joint pain, and anemia in early 2004. At this time, Johnson already suffered from type 2 diabetes and sleep apnea. On 3 March 2004, Johnson was admitted to Thomasville Medical Center, where he received treatment and was released three days later with a discharge diagnosis of anemia, weight loss, fever, chills and myalgias, ischemic heart disease with positive stress test, systemic arterial hypertension, type 2 diabetes, pulmonary fibrosis, and sleep apnea. On 8 March 2004, Johnson was admitted to the emergency room at Thomasville Medical Center due to ongoing medical problems and immediately transferred to North Carolina Baptist Hospital.

At Baptist Hospital, Johnson received multiple interventions, including a thoracotomy, a biopsy, and various tests for viruses and infectious diseases. Although Baptist Hospital staff questioned Johnson regarding possible exposure to any known toxins or harmful irritants at home or at work, no specific cause of his symptoms was determined. While at Baptist Hospital, Johnson experienced organ failure, became ventilator-dependent, and went into cardiac arrest. He died on 8 April 2004, with a discharge diagnosis which included multi-organ failure, staph infection and cytomegalovirus (a type of infection). The discharge diagnosis, however, did not explain the cause of Johnson's death. A later autopsy report listed findings of diffuse alveolar damage (indicating distressed lungs), emphysema, cardiovascular disease, pericardial effusion (fluid or blood collected around the heart), staph infection and cytomegalovirus. Though the autopsy report failed to definitively explain the cause of Johnson's death, it did note that Johnson

was positive for staph infection and cytomegalovirus weeks before his death. The report further noted that either bacterial or viral infection, or a combination of both, might have been the causal agent of the diffuse alveolar damage, since Johnson's lungs had deteriorated rapidly following his admission to Baptist Hospital.

After Johnson's death, plaintiff filed a claim pursuant to the Workers' Compensation Act seeking to recover death benefits, alleging that Johnson died as a result of an occupational disease. In June 2006, defendant hired Trigon Engineering Consultants, Inc. to prepare employee exposure assessments of chemicals and dust in the Rub and Pack Department where Johnson last worked in 2004. Thereafter, defendant retained two M.D./toxicologists, Dr. Henry Simmons and Dr. Theron Blickenstaff, to review Johnson's medical records and render an opinion as to causation. Plaintiff hired Rachel Fountain, Dr. John Chapman, and Dr. Allan Lieberman, an R.N., a chemist, and an M.D./toxicologist, respectively, to render opinions regarding causation. In forming their opinions, Ms. Fountain, Dr. Chapman, and Dr. Lieberman relied in part on material safety data ("MSD") sheets from defendant's plant, which were designed to provide workers with information regarding the safe handling of chemicals and materials present in the workplace. None of Johnson's treating physicians were deposed by either party.

At a 29 August 2006 hearing, the deputy commissioner heard evidence in the case and ordered that depositions of several witnesses be taken. Subsequently, the deputy commissioner issued an Opinion and Award denying plaintiff's claim for compensation. Plaintiff thereafter appealed to the Full Commission. Upon its review, the Full Commission affirmed, adopting the deputy commissioner's Opinion and Award as its own with only minor modifications. The Full Commission's Opinion and Award included the following findings of fact pertinent to this appeal:

2. The Rub and Pack Department was a final manufacturing area through which furniture passed prior to being shipped to retail facilities. Furniture in the Rub and Pack Department had already been processed, manufactured, assembled and stained. Although some chemicals were used in this department, the department also completes tasks that did not involve chemicals, such as installing glass and hardware on furniture to be shipped. Windex, spray lacquer, furniture polish, lacquer thinner, wood stabilizer, and liquid PVAC adhesive were used to some degree in defendant's Rub and Pack Department.

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6. On March 8, 2004, [Johnson] returned to Thomasville Medical Center due to ongoing medical problems and he was transported to North Carolina Baptist Hospital (hereinafter "Baptist Hospital"). A variety of tests were performed on [Johnson], but no specific diagnosis was made. During his admitting interview at Baptist Hospital [Johnson] was questioned about the causes of his illness and [Johnson] denied being exposed to any harmful chemicals or irritants at either home or work.

7. While hospitalized, [Johnson] developed organ failure, experienced several episodes of cardiac arrests, and became ventilator-dependent. [Johnson] died on April 8, 2004, with multiple diagnoses that included methicillin-resistant staphylococcal aureus infection and cytomegalovirus. Despite exhaustive workups, no definitive diagnosis was given that explained the cause of [Johnson]'s illnesses, multi-organ failure, or death. None of [Johnson]'s treating physicians were deposed.

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9. On 9 April 2004, an autopsy was completed that listed anatomical findings of diffuse alveolar damage, emphysema, methicillin resistant staphylococcal aureus, cytomegalovirus, cardiomegaly, artrionephrosclerois [sic], and coronary artery arterio scleorosis [sic]. The autopsy also noted that bacterial infection, viral infection or both might have been the etiologic agent of the diffuse alveolar damage. No toxicological disease was mentioned. [Johnson]'s death certificate lists [Johnson]'s immediate cause of death as a sytole-related multi organ failure.

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12. A known cause of chronic emphysema is cigarette smoke. [Johnson] had discussed with Dr. Blackwell that he was exposed to second-hand smoke.

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15. Dr. Lieberman, a medical doctor who practices environmental and occupational medicine, prepared two reports for [Johnson] in this matter, one in January 2006 and a second in March 2006. Each report claimed that [Johnson] developed an illness or disease caused by the chemicals in his workplace. However, Dr. Lieberman did not identify which chemical he believed caused [Johnson]'s illness and in each report the identity of the alleged illness or disease changed.

16. During his deposition on 7 December 2006, Dr. Lieberman stated that wood dust was the cause of [Johnson]'s disease rather than the chemicals that were present in [Johnson]'s workplace, as he had previously reported. Neither of Dr. Lieberman's reports mentioned wood dust as a cause of [Johnson]'s illness. Dr. Lieberman admitted that he was not fully prepared when he compiled his reports and could not even testify that he reviewed [Johnson]'s full medical records prior to preparing either report. Although Dr. Lieberman focused on wood dust as the cause of [Johnson]'s illness during his deposition, he admitted that he did not know the nature of [Johnson]'s job or how much contact [Johnson] had with wood dust. Further, he did not know what kind of wood was used at [Johnson]'s facility.

17. Although Dr. Lieberman testified that [Johnson] suffered from hypersensitivity pneumonitis, such illness was considered and discarded by the treating physicians at Baptist Hospital. The treating physicians at Baptist Hospital immunosuppressed [Johnson] with high doses of steroids to determine whether he was suffering from a hypersensitivity disorder. However, such procedure did not alter [Johnson]'s condition, and his physicians did not include any hypersensitivity disorder in [Johnson]'s final diagnosis.

18. In June 2006, Trigon Engineering Consultants of Charlotte, North Carolina conducted air quality studies in defendant's Rub and Pack Department. Ms. Christine Brenk, a licensed engineer and Certified Hazardous Materials Manager, conducted two air quality tests at defendant's Rub and Pack Department to determine the employees' exposure to chemicals and dust. Dates were selected to perform the tests when the

concentrations of chemicals and dust in the air would be at their worst based upon the production, workload, and procedures being used. The air quality tests indicated that, on the dates taken, the air quality within the Rub and Pack Department was within OSHA regulatory standards for both chemicals and dust. Defendant's lay witnesses testified that the conditions in the Rub and Pack Department on the test days were approximately the same or similar to the conditions in 2004 and earlier when [Johnson] worked in that facility.

. . . .

19. Defendant's facility was under substantial governmental regulation from multiple agencies with regard to air quality and was subject to surprise inspections. There is no evidence that defendant ever received a fine, citation, or other sanction from any agency as a result of substandard air quality.

21. John Chapman holds a Ph.D. in organic chemistry but was not trained, educated, or experienced in either medicine or toxicology. Without reviewing [Johnson]'s medical records or knowing the illnesses with which [Johnson] was diagnosed, Dr. Chapman rendered an opinion that [Johnson]'s work environment caused his occupational illness and death. Neither Dr. Chapman nor Ms. Fountain identified a specific chemical or irritant alleged to have caused [Johnson]'s condition.

22. Having considered the testimony of Ms. Fountain, Dr. Chapman, Dr. Lieberman, Dr. Simmons, and Dr. Blickenstaff, along with their methodologies, as well as their respective expertise and experience in the field of toxicology and medical science, the Full Commission gives greater weight to the testimony and expert opinions of Dr. Simmons and Dr. Blickenstaff than to Dr. Lieberman, who offered multiple opinions based on incomplete data. The Full Commission gives less weight to the opinions of Ms. Fountain and Dr. Chapman.

23. The Full Commission finds that there is insufficient evidence to find by the greater weight that [Johnson]'s employment with defendant placed him in a position of greater risk than the general public of contracting a compensable occupational disease or that [Johnson]'s employment with defendant caused him to develop a compensable occupational disease.

Based on these and other findings of fact, the Full Commission made the following conclusions of law relevant to this appeal:

> 3. Plaintiff has not proven by the greater weight of the evidence that [Johnson]'s employment with defendant placed him at greater risk than the general public of contracting a compensable occupational disease or that [Johnson]'s employment with defendant caused him to contract a compensable occupational disease. N.C. Gen. Stat. §97-53(13); *Rutledge v. Tutlex Corp.*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983); *Booker v. Duke Medical Center*, 297 N.C. 458, 256 S.E.2d 189 (1979); *Fann v. Burlington Indust.*, 59 N.C. App. 512, 296 S.E.2d 819 (1982).
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> 4. Plaintiff's claim is not compensable under the provisions of the North Carolina Workers' Compensation Act. N.C. Gen. Stat. §97-1, *et seq*.

The Full Commission's Opinion and Award also included the following "Rulings on Evidentiary Matters" section:

> On May 5, 2006, plaintiff filed a Motion to Request Entry Upon Land . . . request[ing] an opportunity to "inspect [defendant's] premises, photograph the premises, and view the premises in preparation for a hearing in this matter." Defendant replied, arguing that plaintiff did not follow the proper procedures under North Carolina Industrial Commission Rule 609 and Rule 34 of the North Carolina Rules of Civil Procedure, in that plaintiff failed to "specifically describe what location and/or item is to be viewed, inspected or photographed." The Deputy Commissioner denied plaintiff's motion. The Full Commission finds that plaintiff was not prejudiced by the denial of the motion and that Deputy Commissioner Gillen properly denied plaintiff's motion.

Plaintiff now appeals the Full Commission's Opinion and Award, assigning error to those findings of fact and conclusions of law listed above, as well as the Full Commission's affirmation of the Deputy Commissioner's denial of plaintiff's motion to compel.

On appeal, we review decisions from the Industrial Commission to determine whether any competent evidence supports the findings of fact and whether the findings of fact support the conclusions of law. *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 700 (2004).

"The findings of fact by the Industrial Commission are conclusive if supported by any competent evidence." *See Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999) (*citing Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977)). This is true "even though there be evidence that would support findings to the contrary." *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965). "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." *Lanning v. Fieldcrest-Cannon, Inc.*, 352 N.C. 98, 106, 530 S.E.2d 54, 60 (2000). However, this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). Instead, our duty goes no further than to determine whether the record contains any evidence tending to support the Commission's findings. *See id*. In turn, we review the Commission's legal conclusions to determine whether they are justified by those findings. *See Aaron v. New Fortis Homes, Inc.*, 127 N.C. App. 711, 714, 493 S.E.2d 305, 306 (1997).

Plaintiff first contends that there is no competent evidence to support Finding of Fact 2, which provides that the "furniture in the Rub and Pack Department had already been processed, manufactured, assembled and stained." Our review of the record, however, reveals that the Commission's finding is supported by the testimony of plant manager David Hunt. Mr. Hunt described how employees' duties in the Rub and Pack Department included using Scotch Brite or steel wool to debur or smooth the surface of furniture, and then attaching purchase parts, including shelves and glass, to furniture. However, Mr. Hunt also testified that "there was very little machine rubbing that was done" in the Rub and Pack Department itself, and that Rub and Pack Department employees were engaged in "basically, doing the clean-up and the final

assembly to the product, getting it ready to go to the customer." This testimony is consistent with Finding of Fact 2, which acknowledges that, although employees in the Rub and Pack Department did use Windex, spray lacquer, furniture polish, lacquer thinner, wood stabilizer, and liquid PVAC adhesive to some degree in cleaning and preparing the products for shipment, the furniture had already been processed, manufactured, assembled, and stained. Accordingly, we conclude that this evidence supports Finding of Fact 2.

Plaintiff next argues that no competent evidence supports Finding of Fact 6, which provides that, when questioned by Baptist Hospital personnel, Johnson "denied being exposed to any harmful chemicals or irritants at either home or work." Our review of the record reveals that the medical report from Baptist Hospital, included as an exhibit in the record on appeal, noted that "[t]he pt [patient] reports 0 [no] known exposures to toxins or inhaled irritants at his job or at home." This evidence supports Finding of Fact 6.

Next, plaintiff contends that no competent evidence supports Finding of Fact 7, which provides that "no definitive diagnosis was given that explained the cause of [Johnson]'s illnesses, multi-organ failure, or death." As part of this argument, plaintiff cites an autopsy finding of emphysematous changes and contends that underlying emphysema was the cause of Johnson's death. However, we note that the autopsy report referenced by plaintiff and included in the record on appeal does not set forth a definitive cause of death. Furthermore, the Commission's finding that no definitive diagnosis was given is supported by the deposition testimony of Dr. Simmons, who, despite noting that Johnson had "unsuspected pulmonary emphysema," testified that Johnson "had expired from an acute illness of some type that defied a very sophisticated investigation that involved multiple organ systems." Accordingly, competent evidence supports Finding of Fact 7.

Plaintiff next argues that no competent evidence supports Finding of Fact 12, in which the Commission found that Johnson "had discussed with Dr. Blackwell that he was exposed to second-hand smoke." Although plaintiff accurately cites testimony to the contrary, this finding of fact is supported by evidence found in the medical records from Dr. Blackwell's office, which were stipulated into evidence by both parties. Those medical records specifically provide, "He [Johnson] has never been a smoker but has been exposed to some second-hand smoke." Although the evidence is conflicting, we reemphasize that "this Court may set aside a finding of fact only if it lacks evidentiary support," *see Rose v. City of Rocky Mount*, 180 N.C. App. 392, 400, 637 S.E.2d 251, 256 (2006) (internal quotation marks omitted), *disc. review denied*, 361 N.C. 356, 644 S.E.2d 232 (2007), and that our "duty goes no further than to determine whether the record contains any evidence tending to support the [challenged] finding[s of fact]." *See Deese v. Champion Int'l Corp*., 352 N.C. 109, 115, 530 S.E.2d 549, 552 (2000) (internal quotation marks omitted). Accordingly, we conclude that the medical records are sufficient evidence to support Finding of Fact 12.

Next, plaintiff challenges Finding of Fact 15, arguing that no competent evidence supports the finding that "Dr. Lieberman did not identify which chemical he believes caused [Johnson]'s illness." Although Dr. Lieberman did identify wood dust as the cause of Johnson's illness and death, he failed to identify a specific chemical contained in the wood dust that, in his opinion, caused Johnson's illness and death. In his deposition, Dr. Lieberman testified that, "the area of greatest concern . . . is wood dust. . . . [P]ractically every piece of wood . . . has been penetrated with chemicals to protect it." Upon cross-examination, Dr. Lieberman testified that the wood treatment chemicals were different from the chemicals listed on the MSD sheets. However, Dr. Lieberman did not identify the specific preservative or pesticide used to treat the

wood nor did he describe the effect these chemicals allegedly had on Johnson's condition. Accordingly, Finding of Fact 15 is supported by competent evidence in the record.

Plaintiff next contends that Finding of Fact 16 is not supported by competent evidence. Finding of Fact 16 provides:

> Although Dr. Lieberman focused on wood dust as the cause of [Johnson]'s illness during his deposition, he admitted that he did not know the nature of [Johnson]'s job or how much contact [Johnson] has with wood dust. Further, he did not know what kind of wood was used at defendant's facility.

This finding is supported by the deposition testimony of Dr. Lieberman, who, upon cross-examination, stated that:

> [Johnson's] job description was just about doing everything that a worker does in the furniture industry and . . . during a period of 38 years he had been exposed to significant amounts of volatile, irritating chemicals, specifically to the upper airway, nose, and throat, and to the lower airway and lungs. . . . There is no way you can work in the furniture industry without being exposed to wood dust. . . he was exposed at some level to whatever was off-gassing.

Dr. Lieberman's testimony makes no specific mention of the nature of Johnson's job or how much contact Johnson had with wood dust prior to the time of his death. Dr. Lieberman also never identified the type of wood used by defendant. As such, Finding of Fact 16 is supported by competent evidence.

Next, plaintiff argues that the Commission's Finding of Fact 17 is not supported by any competent evidence. This finding provides in part, "although Dr. Lieberman testified that [Johnson]suffered from hypersensitivity pneumonitis, such illness was considered and discarded by the treating physicians at Baptist Hospital." Medical records from Baptist Hospital, included in the record on appeal, show that treating physicians there did initially consider hypersensitivity pneumonitis but later excluded this infirmity from their diagnosis in Johnson's discharge summary. As such, Finding of Fact 17 is supported by competent evidence.

Plaintiff also contends that there is insufficient evidence to support Finding of Fact 18, which provides that the air quality within the Rub and Pack Department was within OSHA regulatory standards for both chemicals and dust in June 2006, and these conditions were approximately the same or similar to conditions in 2004 and earlier when Johnson worked in that facility. Our review of the record reveals that Christine Brenk, an environmental and safety consultant with Trigon Engineering Consultants, Inc., testified in her deposition that defendant hired Trigon to conduct an air quality study in defendant's Rub and Pack Department, which was completed in June 2006. The study revealed that air quality within the Rub and Pack Department was well within OSHA standards. Rick Moseley, who worked as corporate safety manager for defendant, testified that conditions in the Rub and Pack Department on the dates of Trigon's air quality studies were as they were in 2004 when Johnson worked there. Thus, we conclude there is competent evidence to support Finding of Fact 18.

Next, plaintiff argues that no competent evidence supports Finding of Fact 19, which provides, "[t]here is no evidence that defendant ever received a fine, citation, or other sanction from any agency as a result of substandard air quality." Our review of the record reveals that this finding is supported by the testimony of defendant's plant manager David Hunt. Mr. Hunt indicated that defendant, though subject to surprise governmental inspections, had not received a fine or operated without a permit during his tenure as plant manager. Thus, Finding of Fact 19 is supported by competent evidence.

Plaintiff also argues that Finding of Fact 21 is not supported by competent evidence. That finding provides that:

> John Chapman holds a Ph.D. in organic chemistry but was not trained, educated, or experienced in either medicine or toxicology. Without reviewing [Johnson]'s medical records or knowing the illnesses with which [Johnson] was diagnosed, Dr. Chapman

> rendered an opinion that [Johnson]'s work environment caused his occupational illness and death. Neither Dr. Chapman nor Ms. Fountain identified a specific chemical or irritant alleged to have caused [Johnson]'s condition.

Our review of the record reveals that, by his own admission during his deposition, Dr. Chapman had not been trained, educated, or experienced in medicine or toxicology. Instead, Dr. Chapman is an adjunct professor who teaches organic chemistry and conducts research. He has worked for Lorillard Tobacco as a senior research chemist, project leader, and head of the safety program. Although the disciplines of toxicology and medicine may be similar in some respects to Dr. Chapman's area of expertise, organic chemistry, Dr. Chapman was not trained, educated or experienced in either medicine or toxicology. The record also reflects that Dr. Chapman based his deposition testimony almost entirely on his review of the MSD sheets and on Dr. Simmons' report, rather than Johnson's actual medical records. Furthermore, our review of Dr. Chapman's testimony shows that, although Dr. Chapman did identify several chemicals that might have been present at Johnson's workplace and opined that prolonged exposure to those chemicals could result in certain illnesses as well as symptoms exhibited by Johnson before death, he admitted that he could not say whether any of these chemicals caused Johnson's condition since, without examining Johnson's medical records, he did not know the exact nature of Johnson's condition. Additionally, our review of the record reveals that, although Rachel Fountain did examine Johnson's medical records, she never identified in her testimony a specific cause of Johnson's death or a specific chemical that caused his death. Accordingly, Finding of Fact 21 is supported by competent evidence.

Plaintiff also argues that the Commission erred in its Finding of Fact 22 by assigning less weight to the testimony of Dr. Chapman and Ms. Fountain than to the testimony of defendant's expert witness. As part of this argument, plaintiff contends that the Deputy Commissioner was in

a better position to determine the credibility and weight of the witness testimony and that the Commission failed to perform an independent evaluation of the facts. Plaintiff's argument overlooks the well-established principle that "the ultimate fact-finding function [rests] with the Commission-not the hearing officer. It is the Commission that ultimately determines credibility, whether from a cold record or from live testimony." *Adams*, 349 N.C. at 681, 509 S.E.2d at 413. Here, the Commission made comprehensive findings of fact regarding each expert witness's qualifications, access to information, and analytical process. Accordingly, this assignment of error is overruled.

Next, plaintiff assigns error to Finding of Fact 23, which provides that there was insufficient evidence that Johnson's employment placed him in a position of greater risk than the general public of contracting a compensable occupational disease or that his employment with defendant caused him to develop a compensable occupational disease. Because this finding of fact gives rise to the Commission's Conclusions of Law 3 and 4, to which plaintiff also assigns error, we address these arguments together.

First we note that, as discussed in *Rutledge* and *Booker*, a plaintiff must prove three elements in order to show a compensable occupational disease under N.C.G.S. §97-53(13):

> (1) the disease must be characteristic of persons engaged in a particular trade or occupation in which the plaintiff is engaged; (2) the disease must not be an ordinary disease of life to which the public is equally exposed; and (3) there must be a causal connection between the disease and the plaintiff's employment.

Jarvis v. Food Lion, Inc., 134 N.C. App. 363, 367, 517 S.E.2d 388, 391, *disc. review denied*, 351 N.C. 356, 541 S.E.2d 139 (1999). The determination of whether an illness or condition qualifies as an occupational disease under N.C.G.S. §97-53(13) is a mixed question of fact and law. *See Moore v. J.P. Stevens & Co.*, 47 N.C. App.744, 750, 269 S.E.2d 159, 163, *disc. review denied*,

301 N.C. 401, 274 S.E.2d 226 (1980). The factual inquiry "should be whether the occupational exposure was such a significant factor in the disease's development that without it the disease would not have developed to such an extent that it caused the physical disability which resulted in claimant's incapacity for work." *Rutledge*, 308 N.C. at 102, 301 S.E.2d at 370. As part of this determination, the Commission may consider, in addition to expert medical testimony, factual circumstances which bear on the question of causation. *Id.* at 105, 301 S.E.2d at 372. Thus, the Commission may consider (1) the nature and extent of claimant's occupational exposure, (2) the presence or absence of other non-work-related exposures and components which contributed to the disease's development, and (3) correlations between claimant's work history and the development of the disease. *See id.*

In regard to the factual inquiry, plaintiff contends that Johnson was "clearly" exposed to hazardous material at work which, as demonstrated by medical literature cited in Dr. Lieberman's testimony, can produce the pathology seen in Johnson. Plaintiff's expert witnesses testified that Johnson suffered from emphysema, a condition which is broadly characteristic of workers in the furniture industry who are "inevitably" exposed to wood dust or certain chemicals. Plaintiff thus cites the testimony of her expert witnesses, and Dr. Lieberman in particular, in contending that no competent evidence supported the Commission's finding that there was insufficient evidence that Johnson's employment placed him in a position of greater risk than the general public of contracting a compensable occupational disease or that his employment with defendant caused him to develop a compensable occupational disease.

This argument, however, overlooks competent evidence which supports the Commission's Findings of Fact 6, 7, 9, and 12, addressed above, which, as a whole, indicate that neither the nature of Johnson's illness nor the specific cause of his death were identified by his

treating physicians or in the autopsy report and that, regardless, Johnson reported exposure to second-hand smoke, a known cause of emphysema. Although Dr. Lieberman's testimony may contain evidence in conflict with these findings, we reemphasize that, where the Commission has decided to assign greater weight to certain evidence, our duty goes no further than to determine whether the record contains any evidence tending to support the Commission's findings. *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274. Accordingly, we conclude that Finding of Fact 23 is supported by competent evidence.

In regard to Conclusions of Law 3 and 4, plaintiff contends that the greater weight of the evidence supports a conclusion that Johnson's employment placed him at a greater risk than the general public and did cause him to contract a compensable occupational disease. This argument overlooks the Commission's assignment of less weight to plaintiff's witnesses' testimony due to their lack of expertise in toxicology, contradictions within their opinions, and their limited knowledge of Johnson's work environment and actual medical records. The Commission instead assigned more weight to the testimony of defendant's expert witnesses and based its conclusions on evidence of Johnson's long history of complex medical problems, evidence of air quality studies conducted in defendant's plant, and the failure of Johnson's treating physicians to even definitively diagnose his illness, much less indicate any causal relationship between such condition and his work environment. As such, the Commission's findings of fact support Conclusion of Law 3. Because plaintiff has failed to prove the causation element of her claim, the claim cannot be compensable under the Workers' Compensation Act and thus Conclusion of Law 4 is also supported. *See Carroll v. Town of Ayden*, 160 N.C. App. 637, 641-42, 586 S.E.2d 822, 826 (2003), *aff'd per curiam*, 359 N.C. 66, 602 S.E.2d 674 (2004).

Finally, plaintiff contends that the Commission erred by affirming the Deputy Commissioner's denial of plaintiff's motion for entry upon land. This Court reviews the Commission's denial of a motion to compel under an abuse of discretion standard. *Williams v. State Farm Mut. Auto. Ins. Co.*, 67 N.C. App. 271, 273, 312 S.E.2d 905, 907 (1984). "An abuse of discretion occurs only when a court makes a patently arbitrary decision, manifestly unsupported by reason." *Buford v. General Motors Corp.*, 339 N.C. 396, 406, 451 S.E.2d 293, 298 (1994).

Here, the Full Commission's "Ruling on Evidentiary Matters" concluded, pursuant to Rule 609 of the Workers' Compensation Rules of North Carolina and Rule 34 of the North Carolina Rules of Civil Procedure, that the Deputy Commissioner properly denied plaintiff's motion to compel and plaintiff was not prejudiced by the denial of this motion. We have no record of plaintiff's motion in the record on appeal, other than reference made by the Commission. However, even assuming arguendo that plaintiff did comply with the Workers' Compensation Rules and the Rules of Civil Procedure, the record supports the Commission's evidentiary ruling indicating that plaintiff was not prejudiced by the denial of the motion. Defendant, incurring both the burden and expense, hired a licensed professional engineering firm specializing in occupational testing to perform air quality tests in defendant's facility. The information gathered by the engineering firm, along with the testimony of witnesses who worked in the plant and were familiar with the conditions there, was sufficient to provide the Commission with the evidence necessary for its decision in this case. Accordingly, we hold there was no manifest abuse of discretion on these facts regarding the Commission's denial of the motion to compel.

Affirmed.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).