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NO. COA07-778

NORTH CAROLINA COURT OF APPEALS

Filed: 4 March 2008

DONNA ELLISON,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 488865

DANA CORPORATION,
Employer

SPECIALTY RISK SERVICES,
Carrier,
Defendants

Appeal by plaintiff from an opinion and award entered 4 April 2007 and as amended 12 April 2007 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 January 2008.

Bollinger & Piemonte, PC, by Bobby L. Bollinger, Jr., for plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Paul C. Lawrence and Jennifer L. Gauger, for defendant-appellees.

HUNTER, Judge.

Donna Ellison (“plaintiff”) appeals an opinion and award by the Full Industrial Commission (“Full Commission” or “Commission”) in which it granted her benefits from 30 July 2004 through 5 August 2004 but denied benefits thereafter. After careful consideration, we affirm the order of the Full Commission.

Plaintiff was employed as an assembler on the “Plymouth line” by Dana Corporation (“defendant”). On 30 July 2004, plaintiff felt numbness and tingling on the left side of her body when she bent over to tape axles. Plaintiff regained feeling and returned to work, but the symptoms commenced again. Plaintiff then visited the emergency room at Iredell Memorial Hospital.

Dr. Sam Stout and Dr. Kenneth Wood, both of whom treated plaintiff, testified that they believed that plaintiff’s symptoms were caused by a degenerative condition and were not the result of a workplace injury. Neither Dr. Stout nor Dr. Wood were able to reveal an acute injury after multiple MRIs and several rounds of testing. Dr. Domagoj Coric, however, testified that plaintiff’s pre-existing degenerative condition was certainly exacerbated by her work activities. The Commission ultimately gave greater weight to the testimony of Dr. Wood and Dr. Stout, awarding plaintiff only five days of disability payments.

Plaintiff presents two issues for this Court’s review: (1) whether the Full Commission erred by concluding that plaintiff’s injuries were caused by a pre-existing condition, not a work-related injury; and (2) whether the Full Commission erred by concluding that plaintiff had only been disabled for five days following the injury.

Our review of an opinion and award of the Commission is limited to a determination of: “(1) whether the Commission’s findings of fact are supported by any competent evidence in the record; and (2) whether the Commission’s findings justify its conclusions of law.” *Goff v. Foster Forbes Glass Div.*, 140 N.C. App. 130, 132-33, 535 S.E.2d 602, 604 (2000). If supported by competent evidence, the Commission’s findings are binding on appeal even when there exists evidence to support findings to the contrary. *Allen v. Roberts Elec. Contr’rs*, 143 N.C. App. 55, 60, 546 S.E.2d 133, 137 (2001).

The Commission's conclusions of law are reviewed *de novo*. *Id.* at 63, 546 S.E.2d at 139. Accordingly, "[w]hen the Commission acts under a misapprehension of the law, the award must be set aside and the case remanded for a new determination using the correct legal standard." *Ballenger v. ITT Grinnell Industrial Piping*, 320 N.C. 155, 158, 357 S.E.2d 683, 685 (1987).

I.

Plaintiff first argues that the Commission erred in finding and concluding that her disability was the result of a pre-existing condition. We disagree.

Although plaintiff argues strenuously that the Commission should have placed more emphasis on her expert's testimony that the injury was work related as opposed to Dr. Stout's testimony that plaintiff's injury was not the result of work, but instead was the result of a pre-existing condition, it is now well settled that the Full Commission, and not this Court, determines the credibility and the weight to be accorded the evidence and testimony before it. *See Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965).

Dr. Stout's and Dr. Wood's testimony is more than sufficient to establish competent evidence to support the Commission's finding of fact that plaintiff's injury was a result of a pre-existing condition, and not the result of her employment with defendant. Dr. Stout testified that plaintiff's lumbar MRI revealed no neural impingement. Plaintiff's cervical spine MRI revealed degenerative changes but no sign of disc or spinal problems. Dr. Stout also testified that plaintiff's cervical spondylosis was an "old disease." Dr. Wood testified in conformity with Dr. Stout, concluding that plaintiff's spondylosis was age appropriate.

Dr. Wood testified that plaintiff's exams suggested that she had no pinched nerve and no acute injury based on an August 2004 MRI. Dr. Stout also testified that an August 2004 nerve conduction study revealed no nerve root entrapment and no left-sided impingement. In

summation, both Dr. Wood and Dr. Stout believe that plaintiff is suffering from a gradual deterioration of the discs in her spine. Although there was evidence from which the Commission could have determined that plaintiff's injury was the result of her employment, the Commission is "not required . . . to find facts as to all credible evidence." *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 602, 532 S.E.2d 207, 213 (2000) (citation omitted).

Specifically, as to Dr. Coric's testimony, the Full Commission found that:

20. Plaintiff has relied on the testimony of Dr. Coric in asserting that the July 30, 2004 work-related [incident] caused or contributed to plaintiff's spondylosis. However, Dr. Coric contradicts his own assertion that the incident could have caused plaintiff's spondylosis by testifying that plaintiff's spondylosis was present well before the July 30, 2004 incident. And although the record does support a finding that the July 30, 2004 incident caused a temporary exacerbation of plaintiff's pre-existing spondylosis, there is insufficient evidence upon which to support Dr. Coric's opinion that plaintiff's cervical spine has continued to degenerate due to the incident. Given that Dr. Coric did not treat plaintiff until five months after the July 30, 2004 incident, the Full Commission gives greater weight to the testimony of Dr. Wood and Dr. Stout, who treated plaintiff contemporaneously with the injury and were of the opinion that plaintiff's cervical spine did not degenerate as a cause of the incident, but in fact, testified that plaintiff's pain and numbness improved within weeks of the alleged incident. Though plaintiff's cervical condition may have deteriorated since the time of the July 30, 2004, incident, there is insufficient evidence to show that such deterioration is causally related to the incident, when the greater weight of the evidence shows that the gradual deterioration of the cervical spine is in fact characteristic of spondylosis.

Because the Commission's findings of fact are supported by competent evidence they are binding on this Court. *Allen*, 143 N.C. App. at 60, 546 S.E.2d at 137. As plaintiff has made no argument that the application of those findings to the applicable law was error, plaintiff's assignments of error as to this issue are therefore rejected.

II.

Plaintiff next argues that the Commission erred as a matter of law by awarding only five days of disability payments. We disagree.

Plaintiff makes no actual arguments concerning the Commission's application of their findings of facts to the controlling law. Instead, plaintiff again asserts that the Commission erred by placing too much emphasis on evidence contrary to her claim while not enough emphasis on evidence that would support her claim. As discussed in section I of this opinion, such an argument is without merit. Accordingly, plaintiff's assignments of error are rejected.

III.

In summary, we affirm the opinion and award entered by the Full Commission as their findings of fact were supported by competent evidence and because plaintiff has raised no argument that the Commission erred as a matter of law.

Affirmed.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).