McGlenn - reversal
Bolch
Sellers

NO. COA99-899

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2000

JIMMIE D. LASCO, Employee,
Plaintiff;

v.

MECKLENBURG COUNTY,
Employer;
SELF-INSURED,
Defendant.

North Carolina
Industrial Commission
I.C. File No. 501443

Appeal by defendant from a judgment entered 12 May 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 20 April 2000.

Jimmie Lasco (plaintiff) was employed by the Mecklenburg County Health Department (the Department) as a Health Investigator. His job involved contacting and bringing into medical compliance those infected with tuberculosis (TB) and human immunodeficiency virus (HIV). In order to contact infected individuals, plaintiff often had to canvass various neighborhoods. He then impressed upon the individuals the need to continue or begin treatment for their disease. Plaintiff brought such individuals into medical compliance by building a rapport of trust and confidence with them. He also employed the use of incentives or "enablers" to encourage a client's continued treatment. These incentives ranged from bus passes to helping provide food and shelter to those in need and also included putting some clients in touch with various sponsors who provided counseling, food, clothing and other aid.

Evidence at the hearing tended to show that on 4 February

1995, plaintiff was paged by one of his clients, a female streetwalker, and was asked to bring her some TB medication. In keeping with his standard working procedure, he then left a message for the charge nurse on voice mail to inform her that he would be going into the field in order to deliver medication to a client. When plaintiff arrived at the location agreed upon, the female client was not there and he began to search for her. During his search plaintiff was paged by Reverend J.W. Sanders, one of his sponsors. Plaintiff had previously contacted Rev. Sanders about one of his clients in need of counseling. Plaintiff and Rev. Sanders agreed to meet for lunch at a local restaurant.

While at the restaurant, plaintiff and Rev. Sanders discussed the need of a particular client for counseling. Shortly thereafter the Jones family (Fred, Gwen, and Fred, Jr.), entered the restaurant. The entire family had been on plaintiff's client list. Fred Jones, Sr., had been infected with TB and was HIV positive. His wife, Gwen, was suspected of having TB due to an abnormal chest x-ray. Fred Jones, Jr., had TB. Gwen Jones approached plaintiff and began screaming and cursing about some photographs plaintiff had taken at the baptisms of Fred, Sr., and Fred, Jr. When plaintiff explained that he did not have the photos with him, the Joneses began to beat him. The police were called and all three men were arrested.

Thereafter, plaintiff sought medical treatment at Presbyterian Hospital Emergency Room. While there plaintiff was treated for an eye abrasion, his nose was x-rayed and he complained of pain in

both his back and leg. Subsequent to this treatment plaintiff was seen by his primary eye physician who treated him for a broken contact lens in his right eye; he had surgery to correct his deviated septum; and he was seen by Dr. Dawkins on 16 February regarding his back. Dr. Dawkins, plaintiff's primary care physician, excused him from work until further testing could be done on his back. Plaintiff was seen by Dr. Dawkins again in November of 1995 and was again excused from work until an MRI could be performed on his back. At the time of the hearing, plaintiff had neither returned to see Dr. Dawkins since his November visit nor had the test been performed on his back. Plaintiff had not returned to the work force as of the date of the hearing of this matter.

According to testimony, plaintiff was notified of the Department's decision to terminate his employment on 14 February 1995. However, because of the lengthy appeal process, the termination was not final until 11 August 1995 and plaintiff's wages and benefits continued through that time. Plaintiff failed to get any further testing on his back from the time of his notification of defendant's intent to terminate his employment to the present.

Plaintiff filed a claim for workers' compensation benefits with the North Carolina Industrial Commission. Following a hearing held by a deputy commissioner who denied plaintiff's claim, plaintiff appealed to the Full Commission. The Full Commission reversed the decision of the deputy commissioner and concluded that

plaintiff was entitled to compensation in that he had "sustained an injury by accident arising out of and in the course of [his] employment" with defendant. Defendant appeals.

D. Baker McIntyre, III, for plaintiff appellee.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by John Brem Smith and Jennifer Ingram Mitchell, for defendant appellant.

HORTON, Judge.

Defendant makes two arguments on appeal. First defendant argues that the Commission erred in concluding that plaintiff's injuries arose out of and in the course of his employment with defendant. Second, defendant contends that the Commission should not have made a final award, as the hearing was held only on the issue of compensability. For reasons set forth below we reverse the opinion of the Commission.

We first note that as a general rule, appellate review of Industrial Commission decisions "is limited to a determination of (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are supported by the findings." *Barham v. Food World,* 300 N.C. 329, 331, 266 S.E.2d 676, 678, *reh'g denied,* 300 N.C. 562, 270 S.E.2d 105 (1980). "If there is any evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary." *Porterfield v. RPC Corp.,* 47 N.C. App. 140, 144, 266 S.E.2d 760, 762 (1980). However, while the

findings of fact are generally binding on appeal, its "legal conclusions are subject to court review." *Id.* at 142, 266 S.E.2d at 762. Therefore, in this case we look to see whether the Commission's legal conclusion that plaintiff's injury arose out of and in the course of employment is supported by its findings of fact.

The Commission's conclusion was based upon the following pertinent findings of fact.

> 1. Plaintiff was employed by defendant as a Health Investigator, whose job duties included locating non-compliant tuberculosis patients and administering medication to those patients. Defendant-employer encouraged its investigators to use incentives to bring patients into compliance, which included offering food and shelter.
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> 2. On Saturday, February 4, 1995, plaintiff received a page from a client who asked for tuberculosis medication to be administered to her; however, plaintiff was unable to locate the client. While on his way to locate this client, plaintiff received a page from a Reverend J.W. Sanders, who was returning plaintiff's call from the day before. Reverend Sanders was a minister from Shelby who plaintiff used as a resource person in helping plaintiff's clients cope with their various medical and personal situations. Plaintiff and Reverend Sanders met later for lunch to discuss counseling for one of plaintiff's clients who had received a low CD-4 count. Plaintiff did not acquire a medical authorization from this client before discussing his situation with Reverend Sanders, as required by the policy of defendant-employer.
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> 3. While at lunch, three of plaintiff's former clients (the Jones family) entered the restaurant and proceeded to physically attack the plaintiff, including beating him with a metal coat rack. The altercation revolved

> around some baptismal pictures the plaintiff had in his possession that this family wanted.
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> 4. As a result of the altercation, plaintiff was treated at Presbyterian Hospital Emergency Room for injuries to his right eye, nasal area and back. Plaintiff had follow-up treatment for his back provided by his primary care physician, Dr. Dawkins. Dr. Dawkins wrote plaintiff out of work until further testing could be completed on his back. Plaintiff was also seen by an optometrist, Dr. Clement, who excused plaintiff from work from February 14, 1995 until February 17, 1995. Finally, plaintiff had surgery to correct a deviated septum, which was performed by Dr. K.D. Williams.
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> 5. At the time of the incident on February 4, 1995, none of the Jones family were still active clients in plaintiff's caseload. One had ended treatment as of November 1993; another's treatment terminated in September 1994. Plaintiff had maintained a personal relationship with the family, but was in fact no longer administering tuberculosis medications to any of them.

While the concepts of "arising out of" and "in the course of" are interrelated, they involve separate and distinct inquiries that must be made and affirmatively established in order for a claimant to receive compensation. "As used in the Workers' Compensation Act, the phrase 'arising out of the employment' refers to the origin or cause of the accidental injury, while the words 'in the course of the employment' refer to the time, place, and circumstances under which an accidental injury occurs." *Roberts v. Burlington Industries,* 321 N.C. 350, 354, 364 S.E.2d 417, 420 (1988). Having carefully reviewed the written opinion issued by the Commission, we conclude that there is no finding of fact that supports the legal conclusion that plaintiff's injuries arose out

of his employment with defendant.

The Commission found that none of the individuals involved in the altercation were active clients and that plaintiff had previously been orally reprimanded for becoming too personally involved with clients. The altercation itself involved photographs plaintiff took while attending the baptisms of two of these former clients. Therefore, even if we assume that plaintiff was in the course of his employment at the time of the incident, the findings made by the Commission do not support the conclusion that the resulting injuries "arose out of" plaintiff's employment with defendant.

Although plaintiff may have met the Jones family in connection with his employment, he continued that relationship after they were no longer his clients. Plaintiff's dispute with this family arose out of his *private* relationship with them. While an assault may be an "accident" within the meaning of the Compensation Act, an injury resulting from such an act "is not compensable when it is inflicted . . . upon an employee by an outsider as the result of a personal relationship between them, and the attack was not created by and not reasonably related to the employment." *Hemric v. Manufacturing Co.*, 54 N.C. App. 314, 318, 283 S.E.2d 436, 438-39 (1981), *disc. review denied*, 304 N.C. 726, 288 S.E.2d 806 (1982).

We note that in its eighth finding of fact, the Commission stated that the "injuries sustained by plaintiff arose out of plaintiff's employment with defendant-employer." We are aware that determining "[w]hether an injury arose out of and in the course of

employment is a mixed question of law and fact . . . ." *Barham*, 300 N.C. at 331, 266 S.E.2d at 678. However, this portion of "finding of fact" number eight is clearly a legal conclusion. "As a general rule . . . any determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997)(citations omitted). The findings do not support the conclusion that the injury arose out of plaintiff's employment with defendant and his injuries are not compensable under the Act. We must, therefore, reverse the decision of the Full Commission regarding the compensability of plaintiff's injuries.

Defendant also argues that, because the parties had agreed to a bifurcated hearing, the Commission should have issued an order regarding only compensability. However, because we have reversed the Commission's decision regarding the compensability of plaintiff's injuries, we need not reach this issue. The decision of the Full Commission is reversed.

Reversed.

Judges WYNN and SMITH concur.

Report per Rule 30(e).