

NO. 9310IC942

NORTH CAROLINA COURT OF APPEALS

Filed: 21 June 1994

ADDIE FORREST

Employee
Plaintiff-Appellant

v.

From the North Carolina
Industrial Commission
No. 527937

PITT COUNTY BOARD OF EDUCATION

Employer

SELF INSURED

(NC Dept of Public Instruction)
Defendant-Appellees.

Appeal by plaintiff from opinion and award filed 25 June 1993 by the Industrial Commission. Heard in the Court of Appeals 10 May 1994.

Hugh D. Cox for the plaintiff-appellant.

Attorney General Michael F. Easley, by Associate Attorney General Don Wright, for the defendant-appellee.

WYNN, Judge.

This case has previously been before us in *Forrest v. Pitt County Bd. Of Education*, 100 N.C. App. 119, 394 S.E.2d 659 (1990), *aff'd*, 328 N.C. 327, 401 S.E.2d 366 (1991). Plaintiff sustained an accident during the scope and course of her employment as a cafeteria manager at one of defendant's public schools. Plaintiff, on her own accord, was examined by Dr. S.C. Boone who surgically removed a small disc from plaintiff's back and treated her with medication and physical therapy. The deputy commissioner determined that plaintiff was not entitled to have her medical expenses with Dr. Boone paid for by her employer and the Industrial Commission affirmed this determination. This Court vacated that conclusion and remanded for further findings as to whether plaintiff complied with N.C. Gen. Stat. § 97-25 and sought the approval of the

Commission for her treatment by Dr. Boone. On remand, the deputy commissioner found that plaintiff had never sought the approval of the Commission for her treatment by Dr. Boone and was therefore not entitled to have defendant pay for those medical expenses. Plaintiff appealed this decision to the full Commission which reviewed the record, concluded there was no good ground for amending the award, and adopted the deputy commissioner's opinion and award as its own. From this decision, plaintiff appeals.

Plaintiff argues that the Commission erred by determining that plaintiff had not sought approval from the Commission regarding her treatment by Dr. Boone and that she was not entitled to have those medical expenses paid for by defendant. Plaintiff also contends that defendant should be equitably estopped from raising the question of whether plaintiff sought the Commission's approval since defendant had an affirmative duty to provide medical care and treatment to plaintiff and it neglected this duty. We disagree.

When reviewing appeals from the Industrial Commission, this Court's inquiry is limited to two questions of law: "(1) whether there was any competent evidence before the Commission to support its findings of fact; and (2) whether the Commission's findings of fact justify its legal conclusions and decision." *Sanderson v. Northeast Constr. Co.*, 77 N.C. App. 117, 120, 334 S.E.2d 392, 394 (1985); see *Hansel v. Sherman Textiles*, 304 N.C. 44, 283 S.E.2d 101 (1981); *Watkins v. City of Asheville*, 99 N.C. App. 302, 392 S.E.2d 754, *disc. rev. denied*, 327 N.C. 488, 397 S.E.2d 238 (1990). The Commission's findings of fact are conclusive on appeal if supported by competent evidence even though there is evidence to support a contrary finding. *Morrison v. Burlington Industries*, 304 N.C. 1, 282 S.E.2d 458 (1981).

N.C. Gen. Stat. § 97-25 provides in pertinent part:

Medical compensation shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense

thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

...

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission.

N.C. Gen. Stat. § 97-25 (1991).

Under this statute, a claimant has the right to choose a physician provided that the claimant obtains the approval of the Industrial Commission within a reasonable time after such procurement, and the treatment sought is to effect a cure or provide rehabilitation. *Braswell v. Pitt County Mem. Hosp.*, 106 N.C. App. 1, 415 S.E.2d 86 (1992); *Forrest*, 100 N.C. App. at 126, 394 S.E.2d at 663. In *Forrest*, this Court held "a plaintiff must only seek approval within a reasonable time not necessarily prior to the services or surgery rendered by the physician." *Forrest*, 100 N.C. App. at 127, 394 S.E.2d at 664. If the physician was an acceptable choice for a treating physician and the request before the Commission was made in a reasonable time, the next question to be determined would be whether the services performed effected a cure or rehabilitation. *Id.*

In the instant case, the deputy commissioner made the following findings of fact:

1. A friend of the plaintiff's suggested the plaintiff see Dr. S. C. Boone in Raleigh. On August 22, 1985, the plaintiff saw Dr. Boone who admitted the plaintiff to the hospital for the period from August 25, 1985 to September 3, 1985 and then saw her on September 24, 1985 and October 24, 1985. Dr. Boone surgically removed a small disc at the L5-S1 on August 26, 1985. After the surgery Dr. Boone treated the plaintiff with medications and physical therapy through December 11, 1985. At the last office visit (October 24, 1985) the plaintiff still complained about back and leg pain. A doctor did not refer the plaintiff to Dr. Boone. The plaintiff went to Dr. Boone on her own.
2. The services Dr. S. C. Boone performed or caused to be performed for the plaintiff affected a cure or her rehabilitation.

3. The only time the plaintiff contacted anyone at the Industrial Commission was when she took papers of some unknown content to the Industrial Commission en route to see Dr. Robert Wilkens at Duke Hospital on or about August 19, 1985.
4. The plaintiff never sought approval of the Industrial Commission for the treatment rendered by or under the direction of Dr. S. C. Boone.

The deputy commissioner then concluded:

The plaintiff never sought approval of the Industrial Commission for the treatment rendered by or under the direction of Dr. S. C. Boone. The plaintiff chose to see Dr. Boone on her own. She accordingly did not seek the approval of the Industrial Commission for said treatment within a reasonable time. The plaintiff, therefore is not entitled to have the medical expenses she incurred with and under the direction of Dr. Boone paid under the provisions of the Workers' Compensation Act.

We have reviewed the record and find these findings to be supported by competent evidence. Plaintiff has never sought the approval of the Commission for her treatment with Dr. Boone and therefore defendant is not obligated to pay the medical expenses she incurred as a result of this treatment.

Plaintiff argues that defendant should be equitably estopped from refusing to pay these medical expenses because it unreasonably withheld the benefits to which plaintiff was entitled for six months, forcing plaintiff to seek medical treatment with Dr. Boone. Assuming arguendo that there was an unreasonable delay in compensating plaintiff, we fail to see how this delay negates plaintiff's duty under N.C. Gen. Stat. § 97-25 to inform the Commission within a reasonable time that she was going to receive treatment from Dr. Boone. See *Schofield v. The Great Atlantic & Pacific Tea Co.*, 299 N.C. 582, 264 S.E.2d 56 (1980). Plaintiff's failure to notify the Commission of her treatment with Dr. Boone deviates defendant's obligation to pay for those expenses.

For the foregoing reasons, the opinion and award of the Industrial Commission is

Affirmed.

Judges EAGLES and LEWIS concur.

Report per Rule 30(e).