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NO. COA02-680

NORTH CAROLINA COURT OF APPEALS

Filed: 21 January 2003

TREVOR POWELL,  
Employee,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 567516

AM LEASE/SCUILLIO  
INTERIOR SYSTEMS,  
Employer,

and

NORTH CAROLINA INSURANCE  
GUARANTY FUND (formerly  
Reliance Insurance Companies,  
Carrier, Administered by  
Dennis & Associates)  
Carrier,  
Defendants.

Appeal by defendants from opinion and award entered 23 February 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 23 December 2002.

*Law Offices of Matthew B. Slotkin, by Matthew B. Slotkin, for plaintiff-appellee.*

*Orbock Bowden Ruark & Dillard, P.C., by Roger L. Dillard, Jr., for defendant-appellants.*

HUDSON, Judge.

The plaintiff, Trevor Powell, was employed by defendant-employer Am Lease/Scuillio Interior Systems as a drywall technician. On 28 August 1995, plaintiff fell from a platform and sustained injuries to his wrist, head and back. On 1 February 1996, defendant-employer filed a Form 60 acknowledging that plaintiff had suffered a compensable injury to his wrist and that it was agreeing to pay him compensation of \$293.35 per week for his time out of work. Plaintiff returned to work on 28 September 1995, at his pre-injury wage. Plaintiff has not been paid temporary total disability compensation for any period since 27 September 1995. Plaintiff was laid off by defendant-employer in November 1995 due to a lack of available work, and he last worked in any capacity in February 1999.

The Commission made extensive findings regarding the plaintiff's course of treatment, which are summarized below. Beginning in September 1995, plaintiff saw Dr. Stephen N. Lang repeatedly for treatment of his injuries. Plaintiff saw Dr. Lang for follow-up treatment on his wrist, and plaintiff also complained of persistent headaches and loss of recall since his accident. Dr. Lang referred him for a neurological consultation. Dr. Lang released plaintiff from care for his wrist on 9 January 1996, and gave him a five percent permanent partial impairment rating to his hand.

On 31 January 1996, plaintiff saw Dr. Michael H. Bowman for a neurological evaluation. Plaintiff continued to complain of mild headaches and memory loss, as well as some blurry vision when he woke in the morning. Dr. Bowman determined that plaintiff probably suffered a concussion when he fell and that he had post-concussive syndrome, which was resolving with time. Plaintiff returned to see Dr. Bowman on 1 July 1996, complaining of headaches and memory loss, as well as dizziness and difficulty concentrating. Dr. Bowman opined that plaintiff was depressed and that he had a "good deal of affective disorder," possibly from extended post-

concussive syndrome, and recommended that plaintiff undergo neuropsychological testing. Plaintiff saw Dr. Bowman again on 24 February 1997, at which time he continued to complain of headaches, lightheadedness, and problems with concentration but had not gone for neuropsychological testing as requested by Dr. Bowman.

On 28 August 1997, plaintiff underwent neuropsychological testing with Dr. John F. Warren, III. Dr. Warren found deficits in plaintiff's attention and executive functioning and concluded that the deficits were due to damage to plaintiff's frontal lobes. In Dr. Warren's opinion, the damage was likely sustained in the 28 August 1995 fall. Dr. Warren also found that plaintiff suffered from depression. Accordingly, Dr. Warren suggested that plaintiff be referred for a medical examination to determine whether he would be an appropriate candidate for anti-depressant medication and recommended that plaintiff join a head injury support group.

Plaintiff was subsequently examined by Dr. Margaret J. Dorfman, a neuropsychologist. Dr. Dorfman determined that plaintiff suffered a cognitive disorder plus head trauma related to the injury by accident on 28 August 1995. Dr. Dorfman testified that the results of the head injury were permanent.

On 2 February 2000, defendants sent plaintiff to Dr. Cynthia J. D'Amico, a psychologist, for a one-time evaluation. Dr. D'Amico concluded that plaintiff suffered from postconcussive disorder but that "although [plaintiff's] deficits in attention/concentration and cognitive flexibility can certainly be associated with a Postconcussional Disorder, his deficits can also be a function of or exacerbated by other factors." Dr. D'Amico determined that plaintiff had reached maximum medical improvement from the head injury but also found that it was "improbable" that the head injury was the cause of his psychosis. Dr. D'Amico stated that she believed that plaintiff suffered from severe mental illness prior to his injury by accident.

Plaintiff last worked in February 1999. On 25 May 1999, he filed a Form 33 request that his claim be assigned for hearing with the Industrial Commission. On 23 February 2001, Deputy Commissioner W. Bain Jones, Jr. entered an opinion and award concluding that plaintiff was entitled to compensation for the five percent permanent partial impairment rating to his hand. However, the deputy commissioner also found that plaintiff's mental illness was not causally related to the injury by accident suffered on 28 August 1995. Accordingly, he denied plaintiff's claim for wage-loss benefits and medical treatment. On 23 February 2002, the Full Commission entered an opinion and award reversing the deputy commissioner's decision and awarding plaintiff temporary total disability compensation and further medical treatment for his neurological conditions, including delusional disorder and depression. Defendants appeal.

Defendants argue that the medical and other evidence of record show that plaintiff's psychiatric problems were a pre-existing condition and were not aggravated by his injury by accident. Defendants further argue that plaintiff voluntarily left his last job and that he admitted that he is not working full-time because he "got tired of trying to find employment." Thus, defendants contend that the Commission erred in determining that plaintiff's delusional disorder and depression were causally related to his injury by accident. Accordingly, defendants argue that the Commission's opinion and award should be reversed and plaintiff's request for temporary total disability payments denied.

After careful review of the record, briefs, and contentions of the parties, we affirm. The findings of fact made by the Industrial Commission are conclusive on appeal if supported by any competent evidence. *Watkins v. City of Asheville*, 99 N.C. App. 302, 303-04, 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, Inc.*, 307 N.C. 99, 102, 296 S.E.2d 456, 458 (1982); *see also Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 414 (1998) (reviewing court is to view evidence so as to give the plaintiff the “benefit of every reasonable inference.”), *disc. review denied*, 350 N.C. 108, 532 S.E.2d 522 (1999).

Here, the Industrial Commission found that as a result of plaintiff’s compensable injury by accident, plaintiff suffered from neurological problems, including delusional disorder and depression, and concluded that plaintiff was entitled to ongoing temporary total disability compensation and further medical treatment. The Commission based its findings and conclusions in part on Dr. Dorfman’s testimony that plaintiff suffered from cognitive impairment plus head trauma; that the disorder resulted from plaintiff’s fall at work; that plaintiff is not able to function in the way he did previously; and that plaintiff’s inability to function led to his depression. Although Dr. D’Amico attributed plaintiff’s psychosis to “his living situation and generalized delusional thinking rather than his head injury,” the Commission gave more weight to Dr. Dorfman’s opinions. The Commission noted that Dr. Dorfman had treated plaintiff over a period of three years, whereas Dr. D’Amico’s opinion was formulated after a one-time, half-day medical examination. This Court has stated that the Industrial Commission:

is the sole judge of the credibility of the witnesses and the weight to be given their testimony. Thus, the Commission may assign more weight and credibility to certain testimony than other. Moreover, if the evidence before the Commission is capable of supporting two contrary findings, the determination of the Commission is conclusive on appeal.

*Dolbow v. Holland Industrial*, 64 N.C. App. 695, 697, 308 S.E.2d 335, 336 (1983) (internal citation and quotation marks omitted), *disc. review denied*, 310 N.C. 308, 312 S.E.2d 651 (1984).

Accordingly, the opinion and award of the Industrial Commission is affirmed.

Affirmed.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).