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NO. COA09-1463

NORTH CAROLINA COURT OF APPEALS

Filed: 1 June 2010

REID WAYNE WALKER, Employee,  
Plaintiff,

v.

From the North Carolina  
Industrial Commission  
I.C. No. 580931

UNITED PARCEL SERVICE, Employer,

and

LIBERTY MUTUAL INSURANCE COMPANY,  
Carrier,

Defendants.

Appeal by plaintiff from opinion and award entered 19 June 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 15 April 2010.

*Wickham & Chambliss, P.L.L.C., by Leslie O. Wickham, Jr., for plaintiff-appellant.*

*Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Jennifer S. Jerzak and Amber M. Liggon, for defendants-appellees.*

BRYANT, Judge.

On 17 November 2005, employee Reid Wayne Walker injured his back while working for defendant-employer United Parcel Service ("UPS"). On 20 October 2008, the deputy commissioner entered an opinion and award from which both parties appealed. On 19 June 2009, the Full Commission entered an opinion and award concluding

that employee sustained a compensable back injury, but that employee had failed to establish a causal connection between the compensable injury and his psychological condition. Employee appeals. As discussed below, we affirm the opinion and award of the Full Commission.

*Facts*

On 17 November 2005, employee injured his back while unloading irregular packages from a truck at a UPS facility in Durham. On 18 November 2005, employee saw a primary care physician, who wrote him out of work for one week. Employee returned to work after a week, but his pain continued. Beginning in April 2006, employee's workload increased and he began to suffer anxiety, paranoia, and weight loss. In June 2006, employee sought treatment for his schizophrenia from his psychiatrist of more than ten years, Dr. Nathan Jackson. Employee told his psychiatrist he was "doing well at work." Employee continued in his regular employment until 6 August 2006, when he last worked. On the following day, employee returned to Dr. Jackson and reported various stresses and worries. Dr. Jackson felt employee was on the verge of a psychotic decompensation and/or a drinking binge and advised him to take a leave from work. Employee has not worked for UPS or any other employer since that date.

In subsequent visits to Dr. Jackson, employee was restricted from work based on his psychiatric problems. At one point, employee sought a letter from Dr. Jackson so he could receive long-

term disability from UPS, but Dr. Jackson refused because he did not believe the job with UPS had caused employee's disability.

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In his brief, employee makes two arguments: that the Commission's (I) findings of fact 9, 10, 11, 12, 14 and 15 are not supported by competent evidence and that these findings do not support conclusion of law 3; and (II) conclusions 2 and 3 are not supported by the Commission's findings. We affirm.

*Standard of Review*

Our review of an opinion and award from the Industrial Commission is limited to determining whether competent evidence supports the Commission's findings of fact and whether those findings support the Commission's conclusions of law. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998), *reh'ing denied*, 350 N.C. 108, 532 S.E.2d 522 (1999); *see also Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). "[T]he Industrial Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. The Commission may accept or reject the testimony of a witness solely on the basis of whether it believes the witness or not." *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683-84 (1982) (citation omitted). "The Commission chooses what findings to make based on its consideration of the evidence[, and this] [C]ourt is not at liberty to supplement the Commission's findings[.]" *Bailey v. Sears Roebuck & Co.*, 131 N.C. App. 649, 653, 508 S.E.2d 831, 834 (1998). Findings supported by competent

evidence are conclusive on appeal even if there was evidence to support contrary findings. *Hedrick v. PPG Industries*, 126 N.C. App. 354, 357, 484 S.E.2d 853, 856, *disc. review denied*, 346 N.C. 546, 488 S.E.2d 801 (1997).

I

Employee first argues that findings of fact 9, 10, 11, 12, 14 and 15 are not supported by competent evidence and that these findings do not support conclusion of law 3. We disagree.

The Full Commission found:

9. Although plaintiff believed his back injury was in conjunction with his increased workload and aggravated his psychological condition for which Dr. Jackson took him out of work, Dr. Jackson declined to draw such a connection.

10. Likewise, Dr. Robert Millet, a psychiatrist at Carolina Behavioral Care who began providing plaintiff's psychological treatment in June 2007, saw plaintiff's schizophrenia and back pain as separate issues and had no opinion regarding a relationship between the two.

11. Based upon the testimony of Dr. Jackson and Dr. Millet, the Full Commission find[s] that plaintiff was removed from work on August 7, 2006 due to his psychological condition which was aggravated by the stress of the increased pace of his work. However, the medical evidence of record fails to establish a causal connection between plaintiff's back injury on November 17, 2005 and his aggravated psychological condition.

12. Although plaintiff was removed from work on August 7, 2006 due to his psychological condition and remains out of work today due to his psychological condition, he nonetheless injured his back on November 17, 2005 when he felt a twinge in his back while unloading a truck. Based upon the testimony of Dr. Peter W. Gilmer, an orthopaedic surgeon at Triangle Orthopaedic Associates, Dr. Andrew K. Lynch, a

physiatrist at Triangle Orthopaedic Associates, and Dr. Toher, plaintiff's primary care physician, the Full Commission finds that plaintiff's ongoing back condition is causally related to his incident at work on November 17, 2005. Other than the one week that plaintiff was taken out of work following his injury, no doctor has indicated that plaintiff should be completely out of work due to his back injury. Rather, plaintiff's treating physicians have indicated that he should be assigned work restrictions for his back injury.

. . .

14. Plaintiff has not yet reached maximum medical improvement for his back condition. According to Dr. Lynch, plaintiff would continue to benefit from prescription medications and may benefit from another radiofrequency ablation. At the present time, plaintiff has not been evaluated for a permanent partial impairment rating.

15. Dr. Jackson advised plaintiff to apply for long-term disability benefits due to his psychological condition. However, Dr. Millet, who is currently treating plaintiff for his psychological condition, felt that in terms of his stable schizophrenia, there is no reason he could not return to some form of employment. The record does not contain evidence that plaintiff has ever been released by Dr. Millet to return to work from a psychological perspective, and plaintiff has not engaged in a job search. If plaintiff is released from a psychological perspective to return to work, his job search would be limited by the restrictions for his back condition as stated by Dr. Lynch.

In his brief, employee does not contend that findings 9 and 10 are not supported by competent evidence; instead, he contends competent evidence would have supported findings to the contrary or different findings. It is not our role to comb through the record searching for evidence which might support different findings. *Erickson v.*

*Siegler*, \_\_ N.C. App. \_\_, \_\_, 672 S.E.2d 772, 780 (2009). Nor is it our role to reweigh the evidence considered by the Full Commission. *Id.*

Each of the challenged findings is supported by competent evidence. Although Dr. Jackson suggested employee's increased workload contributed to his stress and worsened his psychiatric problems, he never made a causal connection between employee's back injury and his psychiatric problems, and in fact, stated he knew little about the back injury. Dr. Jackson did suggest that employee file for long-term disability benefits based on his psychiatric condition, but Dr. Millet testified that employee could work if his schizophrenia stabilized. However, no evidence in the record suggests Dr. Millet has released employee to return to work. Dr. Gilmer testified that employee's back condition was related to the 17 November injury and suggested work restrictions, but never took employee out of work completely. Dr. Lynch testified that employee could benefit from prescription medications and other medical interventions. He recommended work restrictions but never took employee out of work entirely.

Because these challenged findings are supported by competent evidence, they are conclusive on appeal. *Hedrick*, 126 N.C. App. at 357, 484 S.E.2d at 856. The Commission's conclusion 3 states:

3. The medical evidence of record fails to establish a causal relationship between plaintiff's back injury and his aggravated psychological condition, and thus plaintiff's aggravated psychological condition is not compensable. *Click v. Freight Carriers*, 300 N.C. 164, 265 S.E.2d 389 (1980). As plaintiff was taken out of work on August 7, 2006, and

remains out of work, due to his non-compensable psychological condition, he is not entitled to payment of disability compensation at the present time. *Id.* If plaintiff is released from a psychological perspective to return to work, and is unable to find suitable employment within his work restrictions for his compensable back injury after a reasonable job search, then plaintiff would be entitled to request a hearing to establish disability from that point forward if denied by defendants. N.C. Gen. Stat. § 97-29.

"[A] mental or psychological illness may be a compensable injury if it has occurred as a result of an accident arising out of and in the course of the claimant's employment." *Pitillo v. N.C. Dep't of Env'tl. Health & Natural Res.*, 151 N.C. App. 641, 645, 566 S.E.2d 807, 811 (2002). "However, an injury is not a compensable 'injury by accident' if the relevant events were 'neither unexpected nor extraordinary,' and it was only the '[claimants'] emotional response to the [events that] was the precipitating factor.'" *Id.* (quoting *Cody v. Snider Lumber Co.*, 328 N.C. 67, 71, 399 S.E.2d 104, 106 (1991)). The Commission's findings reveal no connection between employee's back injury and his aggravated psychiatric condition. Rather, it appears that his psychiatric condition was possibly aggravated based on employee's response to an increased workload. Employee failed to show that his psychiatric condition was aggravated by his compensable back injury. Conclusion 3 is supported by the findings, and employee's arguments on this issue are overruled.

## II

Employee next argues the Commission's conclusions 2 and 3 are not supported by its findings in that he has established an

aggravation of his pre-existing psychiatric problems by his compensable injury. We disagree.

Conclusion 2 states:

2. A plaintiff in a workers' compensation case has the burden of initially proving "each and every element of compensability," including a causal relationship between the injury and the employment. *Whitfield v. Lab Corp. of Amer.*, 158 N.C. App. 341, 350, 581 S.E.2d 778, 784 (2003). The greater weight of the evidence of record establishes that plaintiff's ongoing back condition is causally related to his incident at work on November 17, 2005 and is therefore compensable. *Booker v. Medical Center*, 297 N.C. 458, 256 S.E.2d 189 (1979).

Employee does not argue in his brief that conclusion 2 is not supported by the Commission's findings. Conclusion 2 is merely a statement of our caselaw and a conclusion that employee's back injury is compensable. Conclusion 2 is supported by competent evidence in the record. As discussed in section I, *supra*, the Commission's findings are supported by competent evidence and in turn support conclusion 3. This argument is overruled.

Affirmed.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).