

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA12-845
NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2013

DONNIE L. LASSITER,
Employee,
Plaintiff,

v.

North Carolina Industrial
Commission
I.C. NO. 589062

TOWN OF SELMA,
Employer,

NORTH CAROLINA LEAGUE OF
MUNICIPALITIES,
Carrier,
Defendants.

Appeal by plaintiff from opinion and award entered 8 May 2012 by the North Carolina Industrial Commission. Heard in the Court of Appeals 28 November 2012.

Lennon, Camak & Bertics, PLLC, by Michael W. Bertics, for plaintiff-appellant.

Teague, Campbell, Dennis & Gorham LLP, by Dayle A. Flammia and Brian M. Love, for defendant-appellees.

BRYANT, Judge.

Herein we remand to the Full the Full Commission for findings of fact and conclusions of law on the issue of whether

any sanctions, penalties, or costs should be assessed against defendants.

Facts and Procedural History

Plaintiff Donnie L. Lassiter filed a claim for workers' compensation benefits, contending that during his employment with defendants Town of Selma and the North Carolina League of Municipalities on 17 August 2005, he contracted an occupational disease - Lyme Disease. Defendants denied plaintiff's claim and plaintiff filed a request for a hearing.

On 25 October 2007, an Opinion and Award by Deputy Commissioner Chrystal Redding Stanback was entered finding that plaintiff had developed a compensable occupational disease of Lyme Disease as a direct result of employment with defendants. Defendants appealed this Opinion and Award. Following a hearing, on 23 June 2008, the Full Commission affirmed Deputy Commissioner Stanback's Opinion and Award.

Defendants' appealed to the North Carolina Court of Appeals. Our Court affirmed the Full Commission's 23 June 2008 Opinion and Award in *Lassiter v. Town of Selma*, 2009 N.C. App. LEXIS 1118 (2009) (unpublished). Defendants' filed a petition for discretionary review to the North Carolina Supreme Court

which was denied on 28 January 2010. *Lassiter v. Town of Selma*, 363 N.C. 805, 2010 N.C. LEXIS 307 (2010).

In October 2010, plaintiff filed a motion for an expedited medical hearing to obtain authorization for medical treatment by plaintiff's treating physician - Dr. Joseph G. Jemsek - and payment for medical expenses/treatment. Defendants objected to treatment by Dr. Jemsek because he had been disciplined by the North Carolina Medical Board, was currently not licensed to practice medicine in North Carolina, and was located in Washington, D.C. Following a telephone conference, on 1 November 2010, Deputy Commissioner Stanback entered a post-conference order denying plaintiff's motion for assignment of Dr. Jemsek as plaintiff's treating physician. A supplemental post-conference order entered 5 November 2010 ordered the parties "to work towards agreeing on a physician to treat Plaintiff's Lyme disease" and to submit a status update no later than 19 November 2010. Plaintiff appealed to the Full Commission from the 1 November 2010 post-conference order.

On 22 November 2010, Deputy Commissioner Stanback entered a final order on expedited medical motion, referring the case to Chief Deputy Commissioner Wanda Blanche Taylor for placement on

a hearing docket as an expedited case. Plaintiff also appealed this order to the Full Commission.

On 6 January 2011, the Full Commission entered an interlocutory order, affirming in part and modifying in part the decision of Deputy Commissioner Stanback: ordering the parties to continue to locate a treating physician for plaintiff in North Carolina; ordering that if the parties were unable to locate a physician prior to the scheduled April 2011 appointment with Dr. Jemsek, plaintiff was authorized to attend the appointment and defendants were to pay for this medical treatment; and, other than the limited authorization for treatment by Dr. Jemsek, ordering that the 22 November 2010 order was to remain in full force and effect as to the scheduling of an evidentiary hearing before a Deputy Commissioner on the remaining issues.

Following a hearing on 27 January 2011, Deputy Commissioner Stanback entered an Opinion and Award on 14 September 2011. The 14 September 2011 Opinion and Award concluded that defendants were obligated to reimburse plaintiff for his medical bills from Dr. Jemsek as well as his out-of-pocket expenses related to Dr. Jemsek's treatment. Defendants were also taxed with plaintiff's attorney's fees and litigation costs for denying Dr. Jemsek's

treatment, medical expenses, and reimbursement without a reasonable basis. Defendants appealed this Opinion and Award to the Full Commission.

Following a hearing held on 27 March 2011, Commissioner Staci T. Meyer of the Full Commission entered an Opinion and Award on 8 May 2012, affirming the Opinion and Award of Deputy Commissioner Stanback, with modifications. The Full Commission recognized two issues before them: "1. Whether Plaintiff and/or his family members are entitled to reimbursement for travel and out-of-pocket medical expenses while being treated by Dr. Jemsek?" and "2. Should any sanctions, penalties, or costs be assessed against Defendants?" The 27 March 2011 Opinion and Award awarded the following:

1. Defendants shall reimburse Plaintiff for his past and future medical and out-of-pocket expenses related to Dr. Jemsek's medical treatment, with the exception of any of the expenses associated with the "Lyme Disease Gala" in Charlotte, North Carolina.

2. Defendants shall pay to Plaintiff all costs representing the medical and out-of-pocket expenses already submitted and shall promptly pay all other medical and out-of-pocket expenses related to Dr. Jemsek's treatment once they are properly submitted.

3. Defendants shall reimburse Plaintiff's wife for her travel expenses related to Plaintiff's treatment with Dr. Jemsek during the period of time in which Plaintiff's

claim was denied. Defendants are not required to provide reimbursement for the expenses of Plaintiff's other family members.

Plaintiff appeals.

Plaintiff advances the following two issues on appeal: (I) whether the Full Commission erred in failing to rule upon the issue of whether defendants should be sanctioned; and (II) whether defendants engaged in unreasonable and unfounded litigiousness by denying reimbursement for Dr. Jemsek's treatment.

Standard of Review

"On appeal of cases from the Industrial Commission, our review is limited to two issues: Whether the Commission's findings of fact are supported by competent evidence and whether the Commission's conclusions of law are justified by its findings of fact." *Shaw v. US Airways, Inc.*, __ N.C. App. __, __, 720 S.E.2d 688, 690 (2011) (citation omitted).

I

Plaintiff first argues that the Industrial Commission erred by failing to rule on the issue of whether "any sanctions, penalties, or costs be assessed against [d]efendants." We agree.

Plaintiff relies on our holding in *Joyner v. Rocky Mt. Mills*, 92 N.C. App. 478, 374 S.E.2d 610 (1988). Our court held that

Plaintiff's claim, initially decided by Commissioner Clay, embodied a claim for future medical expenses. When the matter was 'appealed' to the full Commission by defendants it was the duty and responsibility of the full Commission to decide all of the matters in controversy between the parties. Indeed, if necessary, the full Commission should have conducted a full evidentiary hearing to resolve all matters embodied in plaintiff's claim. Inasmuch as the Industrial Commission decides claims without formal pleadings, it is the duty of the Commission to consider every aspect of plaintiff's claim whether before a hearing officer or an appeal to the full Commission.

Id. at 482, 374 S.E.2d at 613.

In the instant case, the 8 May 2012 Opinion and Award stated that two issues were before the Full Commission: "1. Whether Plaintiff and/or his family members are entitled to reimbursement for travel and out-of-pocket medical expenses while being treated by Dr. Jemsek?" and "2. Should any sanctions, penalties, or costs be assessed against Defendants?" The Full Commission made numerous findings of fact and conclusions of law regarding the first issue. There is no appeal before us regarding that issue. However, the findings

of fact and conclusions of law did not address the latter issue, whether any sanctions, penalties, or costs should be assessed against defendants.

Because "[i]t is well established that the full Commission has the duty and responsibility to decide all matters in controversy between the parties," we remand to the Industrial Commission for a determination of whether any sanctions, penalties, or costs should be assessed against defendants. *Perkins v. U.S. Airways*, 177 N.C. App. 205, 215, 628 S.E.2d 402, 408 (2006) (citing *Payne v. Charlotte Heating & Air Conditioning*, 172 N.C. App. 496, 501, 616 S.E.2d 356, 360 (2005)).

Based on the disposition of plaintiff's first argument, we do not reach his remaining argument.

Remanded.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).