

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-548

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

CYNTHIA G. HAMILTON,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 589494

NORTON DOORS/YALE SECURITY,
INC., and THE PHOENIX GROUP,
Defendants

Appeal by plaintiff from Opinion and Award filed 20 March 2008 by Commissioner Dianne C. Sellers for the full North Carolina Industrial Commission. Heard in the Court of Appeals 9 October 2008.

Poisson, Poisson & Bower, PLLC, by Fred D. Poisson, Jr. and E. Stewart Poisson, for plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, LLP, by Neil P. Andrews and Rebecca L. Zoller, for defendants-appellees.

CALABRIA, Judge.

Cynthia G. Hamilton (“plaintiff”) appeals the Opinion and Award filed by the North Carolina Industrial Commission (“Commission”) denying her claim for workers’ compensation benefits. The Commission found that she failed to show she suffered a compensable injury or occupational disease in the course of and arising out of her employment and that she failed to

show she provided written notice to defendants. We affirm the Commission's Opinion and Award.

On 31 October 2005, plaintiff was employed by Norton Doors ("defendant" or "employer") as an assembly cell operator. Plaintiff's job involved air-testing door closures and loading them onto a tote. Plaintiff alleged that on 31 October 2005, she injured her back while pulling a skid through the factory when the wheel of the skid caught on a valve lying on the floor. Plaintiff worked the remainder of her shift, and did not tell anyone of her alleged accident at work. Plaintiff returned to work the following day. After working for two hours plaintiff told her supervisor that she needed to see a doctor because her back was hurting. Plaintiff's supervisor asked plaintiff if she had hurt her back on the job. Plaintiff replied that she had not.

On 1 November 2005, plaintiff was treated at Union Regional Medical Center. The hospital emergency room notes indicate plaintiff "denies any injury" and the injury occurred while lifting and turning at home. Plaintiff was treated by Dr. Seth Jaffe ("Dr. Jaffe") for her back pain on 2 November 2005, 16 November 2005, 28 November 2005, and 19 December 2005. On 16 January 2006, plaintiff reported to Dr. Jaffe for the first time that she injured her back at work. Plaintiff did not report the alleged workplace accident to her employer until January 2006, even though she had been to the employer's facility frequently to renew her leave of absence forms.

In January 2006, plaintiff returned to work in a light duty role. She was terminated from her employment on 28 March 2006 after her supervisor observed her sleeping on the job.

On 17 July 2007, Deputy Commissioner J. Brad Donovan of the North Carolina Industrial Commission filed an Opinion and Award holding that plaintiff sustained an injury resulting from a specific traumatic incident at work. On 20 March 2008, the Full Commission

issued an Opinion and Award reversing Deputy Commissioner Donovan, and denying plaintiff's claim. The Full Commission concluded plaintiff did not prove by the greater weight of the evidence that she sustained a compensable injury by accident, a specific traumatic incident, or that she suffers from a compensable occupational disease. The Commission further found plaintiff failed to give timely notice of her alleged injury, did not have a reasonable excuse for the delay, and that defendant was prejudiced by the delay. Plaintiff appeals.

Plaintiff contends that the Full Commission erred in holding that plaintiff's claims were barred for failure to provide defendant with written notice of her work-related injury within thirty days of the alleged accident. We disagree.

Our review of an Industrial Commission decision is "limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000).

An injured employee is required to give written notice to the employer within thirty days of a compensable workplace injury. If an employee does not give written notice to the employer within thirty days, the employee is not entitled to receive any compensation for his injury unless a reasonable excuse is made for the delay and the employer was not prejudiced. N.C. Gen. Stat. . 97-22 (2007). Even if the employer was not prejudiced, if the employee was not reasonable in the delay, the claim is barred by N.C. Gen. Stat. . 97-22. "The question of whether an employee has shown reasonable excuse depends on the reasonableness of his conduct under the circumstances." *Lawton v. County of Durham*, 85 N.C. App. 589, 592, 355 S.E.2d 158, 160 (1987).

In *Jones v. Lowe's Cos.*, the employee hurt his back while unloading sheetrock. He was able to continue working and did not miss a day for the next two months. Suddenly his leg became numb and he sought medical treatment. Upon seeking medical treatment he immediately verbally notified his employer, and provided written notice within two weeks. 103 N.C. App. 73, 74, 404 S.E.2d 165, 166 (1991). The court held that until his leg became numb and he sought medical treatment he did not reasonably know the nature, seriousness, or probable compensable character of his injury. Therefore his delay was reasonable. *Id.* at 76, 404 S.E.2d at 167.

In *Peagler v. Tyson Foods, Inc.*, the employee injured his back and neck while attempting to close the door on a truck. The employee had a third grade education, and was originally told by doctors that he had suffered a heart attack. 138 N.C. App. 593, 596, 532 S.E.2d 207, 209 (2000). We held the employee had a reasonable excuse because “due to his limited education, confusion resulting from the initial hospitalization for a possible heart attack, [and] his lack of understanding of the causal relationship between the incident of hitting the truck door latch and the resulting injuries” *Id.* at 603, 532 S.E.2d at 213.

In *Lakey v. U.S. Airways, Inc.*, the employee was injured when she fell during in-flight turbulence. 155 N.C. App. 169, 171, 573 S.E.2d 703, 705 (2002). Although the employee failed to provide written notice of her injury within thirty days, we held that the employer had been provided actual notice on the day the incident occurred. Further, the employer’s appointed physician had seen the employee regarding the injury twice within thirty days of the injury. “Failure of an employee to provide written notice of her injury will not bar her claim where the employer has actual knowledge of her injury.” *Id.* at 172, 573 S.E.2d at 706.

While these cases are not the only instances in which delay will be considered reasonable, they are instructive. Unlike the employees in *Jones*, *Peagler*, and *Lakey*, plaintiff’s

injuries were immediately known to her. Plaintiff's symptoms were present starting 1 November 2005, and she was unable to return to work until January 2006. Further, plaintiff was not misdiagnosed, and plaintiff did not provide verbal notification to her employer to serve as a substitute for written notice within the thirty-day notification period.

Plaintiff argues that the cause and severity of her injury was unknown to her, and she did not realize the connection between her symptoms and the alleged injury at work until over two months after the alleged incident occurred. The Full Commission found this testimony lacked credibility. "The Commission is the sole judge of the credibility of witnesses" *Grant v. Burlington Industries, Inc.*, 77 N.C. App. 241, 247, 335 S.E.2d 327, 332 (1985).

Plaintiff further argues that the employer should have made a more thorough inquiry regarding the cause of plaintiff's injury. The employer failed to inquire into the cause of the injury even though the employer was aware that plaintiff performed a strenuous job. Plaintiff argues the employer's awareness of plaintiff's job, and failure to inquire further into the source of her injury, should constitute actual notice for the purposes of N.C. Gen. Stat. . 97-22. The plaintiff cites no authority for this proposition, and the statute is clear that the employee has the responsibility to report a workplace injury. The plaintiff's claim that the employer has a duty of "reasonable inquiry" is misplaced and cannot be found in the statutes, or our case law.

Under the circumstances, plaintiff did not have a reasonable excuse for her delay in reporting her workplace injury. In the absence of a reasonable excuse, we need not determine if the employer was prejudiced by the delay. Because plaintiff's claims are statutorily barred, we need not address plaintiff's additional assignments of error.

Affirmed.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).