NO. COA08-513

NORTH CAROLINA COURT OF APPEALS

Filed: 6 January 2009

COLTER BRADLEY STANFIELD,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 600557

METAL BEVERAGE CONTAINER/
BALL CORPORATION,
Employer,

SELF-INSURED, SPECIALTY RISK
SERVICES, INC.,
Servicing Agent,
Defendants.

Appeal by defendant from an Opinion and Award filed 30 January 2008 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 September 2008.

Patterson Harkavy, L.L.P., by Henry N. Patterson, Jr., and Jessica E. Leaven, for plaintiff appellee.

Teague, Campbell, Dennis & Gorham, L.L.P., by Tamara R. Nance, for defendant appellant.

McCULLOUGH, Judge.

Defendant, Metal Beverage Container/ Ball Corporation ("defendant"), appeals from an Opinion and Award of the North Carolina Industrial Commission ("the Commission") finding

that Colter Bradley Stanfield ("plaintiff") suffered a compensable injury under the North Carolina Workers' Compensation Act.

I.

Plaintiff was employed by defendant as a spray operator in a plant devoted primarily to the manufacture of cans for a nearby brewery. When a coworker was absent, plaintiff would be reassigned to the position of bodymaker adjuster. While assigned as a spray operator, plaintiff worked only on the floor level of the plant; however, when he was upgraded to the position of bodymaker adjuster, his work station was located on a raised platform. The bodymaker adjuster normally remained on the platform, but would descend three or four steps to the floor level whenever necessary to clear jams in the trimmer machines.

In both his regular job and in the position of bodymaker adjuster, plaintiff was required to pick up cans when they fell out of the machines. The company provided plaintiff with a can hook so that, especially when working on the floor level as a spray operator, he would not have to bend over to reach the cans. However, while working as a bodymaker adjuster, plaintiff was required to pick up cans that had fallen behind the trimmer into an area unreachable from the lower level. To retrieve those cans, plaintiff would have to squat or crouch down on the platform because the can hook was not long enough to cover the distance from the standing position.

On 28 January 2006, plaintiff worked on the night shift and was assigned to work as a bodymaker adjuster. One of the bodymaker machines to which he was assigned that night was pushing cans out at an angle, causing the trimmer machine to jam more often than normal.**[Note1]** Since the trimmer was jamming so frequently, plaintiff had to walk down the steps, clear the jam, and pick up fallen cans repeatedly during his shift.

Ten hours into this shift, at approximately 4:00 a.m., plaintiff crouched once again to remove fallen cans from behind the trimmer machine. When he stood and turned to walk away, he felt his knee pop and experienced acute pain which persisted throughout his shift. Plaintiff reported his injury the next day and was referred to Dr. Joseph Guarino on 2 February 2006. When treatment proved ineffective and plaintiff's symptoms persisted, defendant denied liability for his workers' compensation claim. Plaintiff subsequently sought the medical opinion of his family doctor, who ordered a magnetic resonance imaging ("MRI") and referred him to Dr. Frank Rowan, an orthopedic surgeon. Dr. Rowan reviewed the MRI, which revealed a tear of plaintiff's lateral meniscus, and scheduled plaintiff for arthroscopic surgery. The surgery, which took place on 21 March 2006, allowed plaintiff to return to his regular job by 23 April 2006. However, plaintiff still suffered a seven percent permanent partial impairment rating to his left leg.

While still recovering from surgery, plaintiff initiated this workers' compensation claim by filing a Form 18, alleging injury to his left knee suffered while working for defendant on 29 January 2006. Defendant denied this claim on the grounds that the injury was not suffered as the result of an accident, and as such was not compensable under the Workers' Compensation Act.

Plaintiff filed a request for a hearing and the case was heard before Deputy Commissioner Morgan S. Chapman on 11 January 2007. Deputy Commissioner Chapman concluded that the injury was not the result of an accident and denied plaintiff's claim for compensation. Plaintiff appealed to the Commission, which heard the case on 5 November 2007. On 30 January 2008, the Commission filed an Opinion and Award, reversing Deputy Commissioner Chapman's decision, and awarding compensation for plaintiff's injuries.

II.

"Appellate review of an award from the Industrial Commission is generally limited to two issues: (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492 (2005). When an award is granted upon review of the Commission as provided in N.C. Gen. Stat. §97-85 (2007), the findings of fact shall be deemed conclusive and binding. N.C. Gen. Stat. §97-86 (2007). Defendant does not contend that the findings of the Commission were not based on competent evidence, but rather challenges its conclusion of law.**[Note 2]** Our review in this case is thus limited to whether the Commission's findings of fact support its legal conclusion that plaintiff's injury was compensable under the Workers' Compensation Act as an "injury by accident arising out of and in the course of employment." N.C. Gen. Stat. §97-2(6) (2007).

III.

An accident under the Workers' Compensation Act has been defined as "'an unlooked for and untoward event which is not expected or designed by the person who suffers the injury.'" *Porter v. Shelby Knit, Inc.*, 46 N.C. App. 22, 26, 264 S.E.2d 360, 363 (1980) (citation omitted). "The elements of an 'accident' are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Id.* The findings of the Commission fail to establish either of these elements.

Plaintiff's injury occurred while he was assigned as a bodymaker adjuster, not while working in his regularly assigned position as a spray operator. However, the Full Commission's findings of fact are insufficient to establish that this reassignment constituted an interruption of plaintiff's "normal work routine."

First, plaintiff was injured while picking up cans, an activity the Commission found to be required in "both his regular job and in the bodymaker position." "[O]nce an activity, even a strenuous or otherwise unusual activity, becomes a part of the employee's normal work routine, an injury caused by such activity is not the result of an interruption of the work routine or otherwise an 'injury by accident' under the Workers' Compensation Act." *Bowles v. CTS of Asheville*, 77 N.C. App. 547, 550, 335 S.E.2d 502, 504 (1985). "The cases upholding compensation awards involve some activity which is unusual for that employee." *Id.* at 550, 335 S.E.2d at 504 (citing, as an example, *Adams v. Burlington Industries*, 61 N.C. App. 258, 300 S.E.2d 455 (1983)); *see also Gunter v. Dayco Corp.*, 317 N.C. 670, 675-76, 346 S.E.2d 394, 398 (1986) (compensating the plaintiff who "had not learned how to do the new job when he was injured").

Here, regardless of his station assignment on any given day, the Commission's findings of fact establish that plaintiff's daily work duties included the activity he was conducting when injured.

The Commission found that, in order to pick up cans from the bodymaker position, plaintiff had to descend a set of stairs or squat from his place atop a raised platform, which are body movements not required from the spray operator position; however, the Commission also found that plaintiff had been "trained in the bodymaker position," and worked there "often," including twenty-one times between 12 July and 5 October 2005 and six times during the month of his injury. In fact, plaintiff only worked a total of eighteen days during the month of his injury; thus, he was employed as a bodymaker adjuster a full third of his shifts during that month.

Accordingly, the recurrent nature of plaintiff's employment as a bodymaker adjuster precludes a determination that picking up cans, even if that activity required squatting or descending stairs, was unusual for him.**[Note 3]** Therefore, we conclude, as did Deputy Commissioner Chapman, that "plaintiff worked in the bodymaker adjuster position often enough that performing those work duties had become a regular part of his work routine."

Next, this Court has held that when an employee sustains an injury by performing an unusual volume of ordinarily assigned work duties, it is not an accident and therefore is not compensable. *See Reams v. Burlington Industries,* 42 N.C. App. 54, 255 S.E.2d 586 (1979)(denying compensation for injury suffered because employee had to lift 100, rather than the usual 30, bales of cloth); *Dyer v. Livestock, Inc.*, 50 N.C. App. 291, 273 S.E.2d 321 (1981) (denying compensation for injury suffered because the plaintiff single-handedly operated machines usually operated by three employees).

Here, in concluding that plaintiff had been injured by an "accident," the Commission focused on the "unusual conditions" requirement and attempted to distinguish plaintiff's routine activity from his conduct on the day of his injury. The Commission stated that "the conditions plaintiff experienced on the shift beginning January 28, 2006 compared to previous shifts when he had been upgraded were unusual due to the malfunctioning bodymaker machine and the conditions resulting from the frequent number of jams in the trimmer." Specifically, the Commission found that "it was unusual for plaintiff to have to climb the steps and squat as much as he did during this particular shift." Importantly, however, the Commission also made a finding of fact that the duties of the bodymaker adjuster included "clearing jams on the bodymaker and trimmer machines, changing the tooling on the machines, keeping the machines running and cleaning up the work areas." Thus, even if the trimmer machines were jamming with unusually

high frequency, the Commission's findings establish that the only thing "unusual" about plaintiff's shift on 26 January 2008 was the volume of ordinarily assigned work duties.

In the case at bar, plaintiff's orthopedic surgeon explained that the frequent stair climbing and squatting which was required during plaintiff's shift beginning 28 January 2006 probably weakened the muscles which would normally protect the meniscus and therefore was a contributing factor in the acute meniscal tear plaintiff suffered. Consequently, he opined to a reasonable degree of medical certainty that this increased activity was a direct cause of the lateral meniscal tear; the Commission adopted this causation analysis. In doing so, the Commission chose not to base its decision on the activity itself but instead on the frequency with which that activity was performed. In the absence of some new circumstance not part of plaintiff's normal work routine, the Workers' Compensation Act does not authorize compensation simply because plaintiff was engaged in more than the usual amount of work of the type normally assigned. *See Reams*, 42 N.C. App. at 57, 255 S.E.2d at 588.

For the foregoing reasons, we hold there are insufficient findings of fact to support the legal conclusion that plaintiff's injuries were the result of an accident. Accordingly, the Opinion and Award of the Commission is reversed.

Reversed.

Judges TYSON and CALABRIA concur.

Report per Rule 30(e).

Concurred prior to 31 December 2008.

NOTES

1. Marlon J. Herring, Jr., a production supervisor employed by defendant Ball Corporation, testified that over the course of "a good day" the machines might jam "as few as ten or less" times; whereas, "on a bad day" they may jam more than forty times. The Commission found that the "trimmer was jamming every ten minutes or so." Extrapolated over a twelve-hour

shift, this factual finding underscores the abnormal frequency with which these jams occurred and substantiates the Commission's finding that the trimmer was jamming "more than normal."

2. Defendant made nine assignments of error, but focused the argument in its brief solely on Assignment of Error No. 7, which challenges the Commission's legal conclusion that plaintiff's injury resulted from an accident. Because defendant's other assignments of error were not argued, they are deemed abandoned. See N.C. R. App. P. 28(b)(6) (2008) ("Assignments of error not set out in appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.")

3. Cf. *Adams*, 61 N.C. App. 258, 300 S.E.2d 455 (compensating the plaintiff for an injury incurred while he was performing duties with distinct physical requirements from that of his regular position). However, in *Adams*, though the evidence showed the plaintiff had performed these duties "on previous occasions," the Court did not mention the number of times, recency, or frequency with which he had worked in the new position. In contrast, each of these factors in the case at bar indicate that the physical requirements unique to bodymaker adjuster position had become part of plaintiff's normal work routine by the date of his injury.