NO. COA04-878

NORTH CAROLINA COURT OF APPEALS

Filed: 1 February 2005

HARRY DEBROW,
Employee,
Plaintiff-Appellant

v.

North Carolina Industrial Commission
I.C. File No. 620236

N.C. Department of Correction,
Employer,
Self-Insured

and

KEY RISK MANAGEMENT,
Defendants-Appellees

Appeal by plaintiff from opinion and award filed 7 January 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 January 2005.

Perry, Anthony & Sosna, by Cedric R. Perry, for plaintiff- appellant.

Attorney General Roy Cooper, by Assistant Attorney General Patrick S. Wooten, for defendant-appellees.

MARTIN, Chief Judge.

Plaintiff sustained a compensable injury by accident on 20 November 1995 when he picked up a table and felt a pop in his back. He reported his injury and received immediate medical treatment that day at Halifax Memorial Hospital. He was diagnosed at that time as having degenerative disc disease. He underwent treatment by an orthopedist, Dr. Ganesh Bissrem, who diagnosed a

lumbrosacral strain caused by the compensable injury. Dr. Bissrem treated plaintiff conservatively with physical therapy and returned plaintiff to work full time on 3 January 1996. Plaintiff continued to receive physical therapy treatment through August 1996. Plaintiff continued to work and did not seek medical treatment again for back pain until 23 August 2000, when he consulted Dr. Ralph A. Liebelt, an orthopedic surgeon. Dr. Liebelt diagnosed discogenic pain from the lumbar spine and recommended further testing and possible surgery, among other things.

On 25 July 2001 plaintiff filed a request for a hearing contending that the employer/insurer wrongfully refused to pay for the additional testing or treatment recommended by Dr. Liebelt. The employer referred plaintiff to Dr. Greig McAvoy, an orthopedic surgeon, for evaluations on 2 October 2001 and 14 February 2002. Dr. McAvoy could not find any neurologic compromise or encroachment. He recommended that plaintiff undertake an active exercise program to reduce weight and to stop smoking. He did not think that plaintiff needed further medical treatment.

A deputy commissioner heard the matter on 15 May 2002 and after receiving the depositions of Dr. Liebelt and Dr. McAvoy, filed an opinion and award on 30 April 2003 denying plaintiff's claim for additional compensation. The deputy commissioner ultimately found and concluded that plaintiff had fully recovered from the effects of the compensable injury he sustained on 20 November 1995 and that plaintiff's occasional back pain was unrelated to the compensable injury. Plaintiff excepted to these findings and conclusions and appealed to the Full Commission. Upon its review of the record, a unanimous panel of the full Commission made the same ultimate findings and conclusions as the deputy commissioner.

Plaintiff assigns as error the Full Commission's adoption of the deputy commissioner's ultimate findings and conclusions. He argues these findings and conclusions are not supported by the evidence.

Appellate review of an opinion and award 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). The appellate court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). In making its findings, the Industrial Commission is not required to find facts as to all credible evidence but only those facts which are necessary to support its conclusions of law determining the claim. *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 602, 532 S.E.2d 207, 213 (2000).

The Commission found that plaintiff did not seek any medical treatment for back pain from mid-August 1996 until August 2000. This finding is supported by plaintiff's stipulated medical records. Dr. Liebelt testified that if plaintiff did not seek medical treatment for three years, during which time he was asymptomatic and functioning normally, "it would be hard to relate [his current condition] back to the original injury." Dr. McAvoy testified more emphatically that plaintiff's complaints of pain in 2001 were not related to any injury that occurred in 1995. The foregoing evidence supports the Commission's findings, which in turn support the Commission's conclusions of law and decision to deny additional compensation.

The opinion and award is affirmed.

Affirmed.

Judges McCULLOUGH and CALABRIA concur.

Report per Rule 30(e).