NO. COA10-1430
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

LINDA BALDWIN, Employee,
Plaintiff,

v. Industrial Commission
I.C. No. 621178

A SOUTHERN SEASON, INC.,
Employer,

and

KEY RISK INSURANCE COMPANY,
Carrier,
Defendants.

Appeal by defendants from amended opinion and award entered 23 August 2010 by the Full Commission. Heard in the Court of Appeals 25 April 2011.

Harriet S. Hopkins for plaintiff.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by M. Duane Jones and Tonya Davis Jallow, for defendants.

ELMORE, Judge.

Employer A Southern Season, Inc., and Carrier Key Risk Insurance Company (together, defendants) appeal from an amended opinion and award by the Full Commission entered in favor of

Linda Baldwin (plaintiff). The Full Commission concluded that an admittedly compensable injury had materially aggravated plaintiff's diabetes and back, bladder, and psychological conditions. As a result, plaintiff was entitled to have defendants pay her ongoing temporary total disability compensation and her medical expenses. After careful consideration, we affirm the Full Commission's opinion and award.

I. Background

The following facts, taken from the opinion and award, are undisputed: On 18 May 2006, plaintiff was sitting at her desk at A Southern Season when a box containing a cash register fell from a shelf and landed on plaintiff's left shoulder and back. A co-worker had been standing on a ladder near plaintiff and accidentally caused the box to fall the eight feet from the shelf onto plaintiff. Plaintiff immediately felt a "stabbing type pain" in her back and left shoulder, and she began to leak urine. Plaintiff had a pre-existing bladder condition for which she had an interstim bladder implant, which helped to control her bladder. The impact of the box dislodged the bladder implant, which caused plaintiff to leak urine. In addition to

her bladder-related problems, plaintiff had a number of other pre-existing medical conditions, including depression, Type II diabetes, hypertension, chronic back pain, and degenerative joint disease.

On 22 June 2006, defendants admitted compensability of this incident via a Form 60. Pursuant to the Form 60, defendants began paying plaintiff ongoing total disability compensation at a weekly rate of $389.69. However, plaintiff's average weekly wage was later recalculated to be $259.06, which plaintiff has received since 15 June 2008. Neither party disputes this rate.

After the accident, plaintiff sought treatment at the UNC Hospitals Emergency Room. X-rays of her lumbar and thoracic spine revealed no fractures, but spinal studies indicated that plaintiff's pre-existing degenerative disc disease had progressed in the T7-T10 vertebrae and that there was a slight increase in anterior osteophytosis in the L2 and L3 vertebrae. These spinal studies were compared to spinal studies performed in 2003. Tests also showed that the force of the impact had dislodged the sacral lead of her interstim bladder implant. Plaintiff was restricted from strenuous activity and lifting more than fifteen pounds until she healed. She was also instructed to apply ice and continue her prescribed medications.

On 22 May 2002, plaintiff visited UNC Family Medicine and was treated by Dr. Susan Slatkoff. Dr. Slatkoff medically excused plaintiff from work for an undetermined period of time after noting that she was in obvious discomfort, reported having difficulty moving around, and had fallen the previous night because of her severe pain. On 29 May 2006, plaintiff saw Dr. Timothy Collins at the Duke Pain and Palliative Care Clinic. She reported that her back pain had worsened as a result of her work injury, and a CT scan showed a minimal disc bulge at the L5-S1 vertebrae. Dr. Collins diagnosed her as having chronic musculoskeletal back pain and increased the dosage of her pain medication. He referred her to physical therapy, which she attended three times a week, beginning in August 2006. On 1 June 2006, Dr. Kathleen Barnhouse extended plaintiff's out-of-work status for an undetermined period of time. Dr. Barnhouse noted that plaintiff's high blood pressure was uncontrolled due to the severity of her back pain. As a result, she increased plaintiff's blood pressure medication.

On 17 July 2006, Dr. Lesco Rogers, an anesthesiologist, examined plaintiff for possible lumbar steroid injections for her pain. Dr. Rogers referred her to Dr. Christopher Edwards for a psychological evaluation to determine the appropriateness

of the injections and other medication strategies. Dr. Edwards first evaluated plaintiff on 9 August 2006. He reported that her work injury made her back pain "constantly severe," and he diagnosed her with generalized anxiety disorder and recurrent major depressive disorder without psychotic features.

On 17 August 2006, Dr. Collins saw plaintiff again, and he noted that she was not sleeping well, that she could not "get comfortable" because of the pain, and that her pain increased with movement or prolonged sitting or standing. He noted that she had a flat affect, depressed mood, and altered gait. He prescribed a muscle relaxer for her and encouraged her to continue physical therapy and biofeedback. He testified that there was no evidence that she was seeking "secondary gain." He opined that the work injury significantly exacerbated plaintiff's pre-existing back condition. He also opined that, since the accident, she has functioned at a much lower level.

On 29 August 2006, plaintiff reported increased feelings of depression to Dr. Edwards. He increased her anti-depressant medication. The next month he scheduled psychotherapy sessions for her, in addition to her scheduled biofeedback and physical therapy sessions. On 30 November 2006, plaintiff reported a suicidal ideation with a plan to Dr. Edwards and was

hospitalized. She was released on 7 December 2006. Plaintiff testified that, before her work injury, her therapy and medications were helping with her depression symptoms. However, after 18 May 2006, she lost interest in activities and had frequent suicidal thoughts. Like Dr. Collins, Dr. Edwards testified that he observed no "red flags" signifying symptom magnification. He opined that the work injury exacerbated plaintiff's pre-existing depression and its associated symptoms. In his opinion, plaintiff's work injury was "the straw that broke the camel's back," explaining that the intensity of plaintiff's depression worsened after the accident. He opined to a reasonable degree of medical certainty that plaintiff's 18 May 2006 work injury substantially aggravated her pre-existing depression.

In February 2007, plaintiff's interstim bladder implant lead migrated again, and she experienced an increase in voiding episodes. The lead was repaired in April 2007, but the wire protruded and became infected, landing plaintiff in the hospital again from 11 May to 18 May 2007. The implant was removed and had not been replaced as of the date of the amended opinion and award. Dr. Amundsen testified that she would not repair the

interstim implant until plaintiff's blood glucose levels were under control.

On 12 June 2007, plaintiff saw endocrinologist Dr. Susan Spratt, reporting tingling and numbness in her feet. Dr. Spratt reviewed plaintiff's diabetes history and stressed to her the importance of controlling her diet and monitoring her blood sugar. Plaintiff returned to Dr. Spratt on 12 July 2007 because her blood pressure had dropped below seventy. She was then transported by ambulance to the Duke University Emergency Room, where she reported significant low back pain and was given morphine.

In addition to finding the facts related above, the Full Commission made four findings of facts that defendants now challenge on appeal:

> 24. On July 25, 2006, Dr. Martha Peck at UNC noted that Plaintiff's diabetes had worsened to some degree as the result of her injury by accident and other life stressors. On August 7, 2006, Dr. Susan Braithwaite at UNC also noted the worsening of Plaintiff's diabetes, and increased her medication. Dr. Braithwaite also noted that Plaintiff's blood pressure was high, and started Plaintiff on a new medication.
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> 25. Dr. Braithwaite has treated and monitored Plaintiff's condition since at least July 13, 2003, and continued to do so through to the end of 2006. Dr. Braithwaite opined that the increases in Plaintiff's

> blood sugars and blood pressure were causally related to her May 18, 2006, injury by accident as evidenced by the need to increase or change her medications.
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> 41. Based upon the totality of the credible evidence of record, Plaintiff's pre-existing back and bladder conditions, as well as the ongoing problem of not being able to have her interstim unit re-implanted due to the causally related worsening of her diabetes problems, were materially aggravated for the worse as the result of her May 18, 2006, injury by accident.
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> 42. Based upon the totality of the credible evidence of record, Plaintiff's pre-existing diabetes condition was materially aggravated for the worse as the result of her May 18, 2006, injury by accident.

The Full Commission made the following relevant conclusions of law:

> 3. Based upon the totality of the credible evidence of record, Plaintiff's pre-existing diabetes condition was materially aggravated for the worse as the result of her May 18, 2006, injury by accident. N.C. Gen. Stat. § 97-2(6); ***Brown v. Family Dollar Distrib. Ctr.***, 129 N.C. App. 361, 499 S.E.2d 197 (1998).
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> 4. Based upon the totality of the credible evidence of record, Defendants have failed to rebut the Parsons' presumption regarding Plaintiff's post accident bladder and interstim unit problems as well as her back problems. ***Perez v. American Airlines***, 174 N.C. App. 128, 620 S.E.2d 288 (2005)[;] ***Parsons v. Pantry, Inc.***, 126 N.C. App. 540, 485 S.E.2d 867 (1997).

> 5. Even without the Parsons' presumption, based upon the totality of the credible evidence of record, Plaintiff's pre-existing back and bladder conditions, as well as the ongoing problem of not being able to have her interstim unit re-implanted due to the causally related worsening of her diabetes problems, were materially aggravated for the worse as the result of her May 18, 2006, injury by accident. N.C. Gen. Stat. § 97-2(6); *Brown v. Family Dollar Distrib. Ctr.*, 129 N.C. App. 361, 499 S.E.2d 197 (1998)[;] *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 485 S.E.2d 867 (1997).
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> 6. Based upon the totality of the credible evidence of record, Plaintiff's pre-existing depression and psychological problems were materially aggravated for the worse as the result of her May 18, 2006, injury by accident. N.C. Gen. Stat. § 97-2(6); *Brown v. Family Dollar Distrib. Ctr.*, 129 N.C. App. 361, 499 S.E.2d 197 (1998).

The Full Commission awarded plaintiff ongoing temporary total disability compensation at the rate of $259.06 per week, beginning 18 May 2006 and continuing until further order by the Industrial Commission. The Full Commission also ordered defendants to pay any medical expenses related to plaintiff's compensable injury as well as costs and Dr. Edwards's expert witness fees. Defendants now appeal.

II. Arguments

A. Material Aggravation of Pre-Existing Diabetes

Defendants first argue that the Full Commission erred by concluding that plaintiff's "pre-existing diabetes condition was materially aggravated for the worse as a result of her May 18, 2006, injury by accident." On appeal, defendants argue that findings of fact 24 and 25 were also made in error and, thus, conclusion of law 3 must fail as well. We agree that portions of findings of fact 24 and 25 were made in error but finding of fact 42 was not.

> This Court's review is limited to a consideration of whether there was any competent evidence to support the Full Commission's findings of fact and whether these findings of fact support the Commission's conclusions of law. This Court has stated that so long as there is some evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary.

Ard v. Owens-Illinois, 182 N.C. App. 493, 496, 642 S.E.2d 257, 259-60 (2007) (quotations, citations, and emphasis omitted). "The Commission's findings of fact may only be set aside in the complete absence of competent evidence to support them." *Gore v. Myrtle/Mueller*, 362 N.C. 27, 42, 653 S.E.2d 400, 410 (2007) (citation omitted). "Thus, on appeal, appellate courts do 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." *Id.* at 41, 653 S.E.2d at 409 (quotations and citation omitted).

To receive compensation pursuant to the Workers' Compensation Act, these three conditions must be met: "(1) the claimant suffered a personal injury by accident; (2) such injury arose in the course of the employment; and (3) such injury arose out of the employment." *Ard*, 182 N.C. App. at 496, 642 S.E.2d at 260 (quotations and citations omitted). "All natural consequences that result from a work-related injury are compensable under the Workers' Compensation Act." *Cannon v. Goodyear Tire & Rubber Co.*, 171 N.C. App. 254, 260, 614 S.E.2d 440, 444 (2005) (citation omitted).

> North Carolina law is clear that "[w]hen a pre-existing, nondisabling, non-job-related condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment . . . so that disability results, then the employer must compensate the employee for the entire resulting disability[.]" *Morrison v. Burlington Industries*, 304 N.C. 1, 18, 282 S.E.2d 458, 470 (1981). As long as the work-related accident contributed in 'some reasonable degree' to [the] plaintiff's disability, [the plaintiff] is entitled to compensation."

Id. at 262, 614 S.E.2d at 445 (additional quotations and citation omitted; alterations in original).

In *Gore v. Myrtle/Mueller*, the Supreme Court relied on medical records to find support for the Full Commission's "findings of fact determining that there was a causal connection between [the] plaintiff's injuries and her work." 362 N.C. at 41, 653 S.E.2d at 409. The Court explained that, because the medical "records were stipulated into evidence by the parties[,] . . . they represent competent evidence to support the Commission's findings of fact" about causation. *Id.* at 41, 653 S.E.2d at 409. The Court recited the following evidence, taken from the medical records:

> 1. A 2 May 2000 note by Dr. Hodgson noting that plaintiff's "back pain began at work in January of 2000."
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> 2. A second note indicating that plaintiff is "100% disabled due to back pain."
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> 3. A progress note showing plaintiff's diagnosis as "BACK PAIN DUE TO DEGENERATIVE DISC DISEASE AND SPONDYLOLISTHESIS, DEFINITELY WORK RELATED ONSET WITH UNDERLYING CHRONIC ETIOLOGY." The note also indicated that: "She does relate that her back was not bothering her until January, 2000 when she was put on heavier duty work at the plant."

Gore, 362 N.C. at 41-42, 653 S.E.2d at 409-10. The Court held that

> the above materials constitute[d] competent evidence to support the Commission's findings that [the] plaintiff "sustained a

> compensable injury by accident arising out of and as a direct result of her employment with [the] defendant in that she suffered specific traumatic incidents" and that her workplace injuries "aggravated a preexisting, nondisabling condition."

Id. at 42, 653 S.E.2d at 410.

Similarly, we must look to the medical records to find support for findings of fact 24 and 25. On appeal, defendants only challenge those portions of the findings that state a causal relationship between the injury and plaintiff's diabetes. We have reviewed the medical records upon which both findings are based, and we hold that finding of fact 24 overstates the evidence, but finding of fact 25 does not. Finding of fact 24 states that Dr. Peck noted that plaintiff's "diabetes had worsened to some degree *as the result of her injury by accident* and other life stressors." (Emphasis added.) However, Dr. Peck's notes from 25 July 2006 only state, "The patient also admits to stress in her life, as she is recovering from injury at work and is on worker [*sic*] compensation." This statement does not support the Full Commission's finding that Dr. Peck stated that the injury caused plaintiff's diabetes to worsen, though it does suggest a relationship.

However, the medical records do support the Full Commission's finding that "Dr. Braithwaite opined that the

increases in Plaintiff's blood sugars and blood pressure were causally related to her May 18, 2006, injury by accident as evidenced by the need to increase or change her medications." On 7 August 2006, Dr. Braithwaite noted that plaintiff's blood glucose levels had been running high after the injury, and that she would increase the dosages of two of plaintiff's diabetes medications, Lantus and Humalog. On 9 August 2006, Dr. Braithwaite made the following note: "To achieve control for alterations of blood glucose and blood pressure following an injury at work, with increased pain due to dislodgment of the stimulator, the patient now is on higher doses of insulin and antihypertensives compared to before the injury." This note supports the factual finding that, in Dr. Braithwaite's opinion, plaintiff's rise in blood glucose and need for increased insulin resulted from the work injury.

In addition, the testimony of Christopher Edwards, Ph.D., further supports finding of fact 42, that the work injury materially aggravated plaintiff's pre-existing diabetes. Dr. Edwards, a psychologist, began treating plaintiff in August or September of 2006. However, he reviewed her extensive medical and mental health history. Although most of his testimony focused on plaintiff's depression, he did opine about the

relationship between plaintiff's depression and her other medical issues, such as her back pain and diabetes. He explained that stress has an interactive effect on glycemic control, and several publications have shown "unequivocally" that "increased stress can debilitate glycemic control. The diabetes control can be made worse when individuals are under stress." He continued,

> We really conceptualized [plaintiff's] basic functioning in quite that way, that there was this interaction. At – at times, her pain produced stress and – and – and exacerbations of her psychiatric illness that precipitated declines in other areas of her function, to include more gastric pain, her diverticulitis inflamed. Her diabetes was extraordinarily variable and poorly controlled. And so we – we did conceptualize things really quite in that manner.

When asked about plaintiff's occasional noncompliance with her diabetes medication, Dr. Edwards also attributed that to plaintiff's depression:

> [S]he was noncompliant with many of the regimens that we believe she had. We believe we account for that psychiatrically. But in fact she has had difficulties with compliance throughout what appears to be her history of treatment.
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> Well, I mean there are several aspects of her presentation psychiatrically that I think account for and predict her noncompliance. For example, is she always motivated to do things that benefit her?

> And the answer is no. We think we account for that both in terms of personality disorder and in terms of depression.
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> We think that – does she struggle at time with whether she can get better and actually wants to get better versus wants to die? And the answer to that is absolutely. We believe that both actively and passively [plaintiff] has struggled and suffered. And we – you know, we have certainly interpreted in the context of pain and her psychiatric illnesses some of her noncompliance as passive attempts to die.
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> So I think – is it extraordinary on some level? Yes, because I think there are consistencies in her noncomplian[ce] across domains and across medical conditions. She didn't just neglect her diabetes. She neglected many aspects of her presentation.

Dr. Edwards also opined, unequivocally, that the work injury exacerbated plaintiff's mental illness. The Full Commission found the same as fact, and defendants did not challenge that finding, so it is binding on appeal. *See Newcomb v. Greensboro Pipe Co.*, 196 N.C. App. 675, 676, 677 S.E.2d 167, 167 (2009). Dr. Edwards's testimony supports finding of fact 42, that the work injury materially aggravated plaintiff's pre-existing diabetes condition, by stating that plaintiff's worsening diabetes was at least in part explained by plaintiff's worsening depression and increased pain. We have previously upheld a similar finding of fact based on similar testimony. *See Lewis v. N.C. Dep't of Corr.*, 167 N.C. App. 560, 565, 606 S.E.2d 199, 203 (2004) (finding support for the Full Commission's finding

that the plaintiff's compensable posttraumatic stress disorder exacerbated his preexisting diabetes when the treating psychiatrist testified that "[Plaintiff] has posttraumatic stress disorder arising from his employment as a probation officer for North Carolina and . . . this posttraumatic stress disorder and the anxiety arising from it exacerbate his diabetes and reduce his ability to manage this diabetic condition optimally.").

Accordingly, although the portion of finding of fact 24 relating to Dr. Peck is not supported by the evidence, the remainder of findings of fact 24, 25, and 42 are supported by the evidence. These findings, in turn, support conclusion of law 3.

B. Material Aggravation of Pre-Existing Bladder Condition

Defendants also argue that "[t]he greater weight of the evidence establishes that Plaintiff's current bladder condition is not related to the workplace accident, but rather is due to her uncontrolled diabetes, which, as argued above, is not compensable." First, we reiterate that our role is not to weigh the evidence, but merely to determine if the findings of fact are supported by any competent evidence. *Ard*, 182 N.C. App. at

496, 642 S.E.2d at 259-60. Second, because defendants' argument relies on the success of their first argument, which has failed, this argument also fails.

III. Conclusion

For the foregoing reasons, we affirm the amended opinion and award of the Full Commission.

Affirmed.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).