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Bolch
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NO. COA99-479

NORTH CAROLINA COURT OF APPEALS

Filed: 20 June 2000

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COURT OF APPEALS
OF NORTH CAROLINA

JOANNE M. WADE,
Employee,
Plaintiff;

v..

LATCO CONSTRUCTION
COMPANY,
Employer;

TRAVELERS INSURANCE COMPANY,
Carrier;
Defendant.

North Carolina
Industrial Commission
I.C. No. 624825

Appeal by plaintiff from opinion and award entered 12 October 1998 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 May 2000.

BRENTON D. ADAMS for plaintiff-appellant.

HEDRICK, EATMAN, GARDNER & KINCHELOE, L.L.P., by Jeffrey A. Doyle, for defendants-appellants.

TIMMONS-GOODSON, Judge.

Joanne M. Wade ("plaintiff") filed a claim for workers' compensation benefits for injuries arising out of and in the course of her employment with Latco Construction Company ("defendant-employer"). This matter was heard by Deputy Commissioner Douglas E. Berger on 26 June 1997. The evidence tended to show that plaintiff was employed by defendant-employer as a laborer on 11 November 1994, when she suffered an on-the-job injury to her back while assisting others in moving a metal rebar mat. Plaintiff was

seen at Doctor's Urgent Care Center on 14 November 1994 for her injury and was released to return to light duty work with restrictions on 16 November 1994. When plaintiff was seen at Doctor's Urgent Care on 21 November 1994, her condition had improved. The treating physician diagnosed plaintiff with resolving lumbar strain and released her to return to regular duty work on 25 November 1994.

Plaintiff was subsequently seen at Primary Care Plus on 12 December 1994, 16 January 1995, 21 March 1995, and 14 April 1995 through 9 May 1995 for various unrelated health concerns. Notably, the visit on 21 March 1995 was in regard to tenderness in plaintiff's cervical spine and tenderness of the thoracic and lumbar spine from T8-L3, with no paresthesias. Dr. Edward R. Mulcahy, plaintiff's orthopedic surgeon, opined that plaintiff's neck pain was unrelated to the 11 November 1994 injury and that plaintiff's tenderness from T8 to L3 was not consistent with a herniated disc at L5-S1.

On or about 22 June 1995, while at a concert, plaintiff fell approximately two and a half feet from a platform onto a concrete surface. Consequently, on 25 June 1995, plaintiff was seen at Primary Care Plus complaining of left-sided back, neck, head, and abdominal pain. Thereafter, plaintiff was treated by a chiropractor, Dr. Brenda Burley, for left-sided lower back and middle back pain. When plaintiff started to feel numbness in her legs in 1996, she was referred to Dr. Carol Wadon. After examining plaintiff on 23 May 1996, Dr. Wadon opined that surgery was

unnecessary. Moreover, electrodiagnostic studies ordered by Dr. Wadon and performed on 13 June 1996 were normal.

After being treated intermittently at various facilities with complaints of back pain, plaintiff was seen by Dr. Mulcahy on 10 March 1997, with complaints of pain in her left mid-lumbar spine, with paresthesias. Dr. Mulcahy diagnosed plaintiff with a left lumbar strain. However, a subsequent MRI revealed a left posterior herniation of the L5-S1 disc. Dr. Mulcahy recommended surgery to repair plaintiff's herniated disc. According to the doctor, plaintiff was capable of gainful employment in a light duty capacity, with restrictions which exclude any repeated bending or lifting of more than fifteen pounds, twisting, repeated stair-climbing, or driving for more than twenty minutes without resting. Dr. Mulcahy was the first physician to indicate any restrictions on plaintiff's work status subsequent to her release to regular work on 25 November 1994.

Prior to the on-the-job accident, plaintiff had given notice that she would be terminating her employment on 11 November 1994 due to cold weather and problems with childcare. When she ended her employment with defendant-employer, job opportunities were still available to her. After leaving the employ of defendant-employer, plaintiff sought employment briefly when required to do so in order to receive unemployment benefits.

By opinion and award filed 29 December 1997, Deputy Commissioner Berger awarded plaintiff temporary total disability compensation for the time period between 18 November 1994 and 25

November 1994. The deputy commissioner reserved ruling on plaintiff's claim for additional temporary total disability following the surgical removal of her herniated disc, and he reserved ruling on plaintiff's claim for permanent partial disability compensation for her compensable low back injury. Plaintiff noticed appeal to the Full Commission, and by opinion and award filed 12 October 1998, the Full Commission affirmed the deputy commissioner's award of temporary total disability compensation for the time period beginning 18 November 1994 and ending 25 November 1994. The Full Commission, however, denied plaintiff's claim for additional temporary total disability compensation following the surgical removal of her herniated disc. Plaintiff now appeals to this Court.

On appeal, plaintiff first argues that the Full Commission erred in concluding that plaintiff's herniated disc was not the result of a specific traumatic incident of the work assigned and that the specific traumatic incident had resolved by 25 November 1994. Moreover, plaintiff argues that the Commission erred in placing the burden of proof upon her to prove that she was no longer disabled after 25 November 1994. We disagree.

It is well settled that this Court asks only two questions upon appellate review of an Industrial Commission opinion and award: (1) "whether the Commission's findings of fact are supported by competent evidence"; and (2) whether the Commission's findings justify its conclusions of law. *Floyd v. First Citizens*

Bank, 132 N.C. App. 527, 528, 512 S.E.2d 454, 455, *disc. review denied*, 350 N.C. 829, ___ S.E.2d ___ (1999) (citation omitted). The Commission's findings of fact are binding on this Court if those findings are supported by any competent evidence, "although there may be some evidence to support findings to the contrary." *Higgs v. Southeastern Cleaning Service*, 122 N.C. App. 456, 459, 470 S.E.2d 337, 339 (1996), *disc. review improvidently allowed*, 345 N.C. 629, 481 S.E.2d 84 (1997). However, "[c]onclusions of law . . . are reviewable *de novo* by this Court." *Grantham v. R. G. Barry Corp.*, 127 N.C. App. 529, 534, 491 S.E.2d 678, 681 (1997), *disc. review denied*, 347 N.C. 671, 500 S.E.2d 86 (1998).

"To be compensable an accident must arise out of the course and scope of employment.'" *Floyd*, 132 N.C. App. at 529, 512 S.E.2d at 455 (quoting *Stewart v. Dept. of Corrections*, 29 N.C. App. 735, 737-38, 225 S.E.2d 336, 338 (1976)). In *Grantham v. R. G. Barry Corp.*, the court noted, "Initially, in a claim under the Workers' Compensation Act, the claimant has the burden of proving the extent and degree of her disability; 'once the disability is proven, [however,] there is a presumption that it continues until the employee returns to work at wages equal to those [s]he was receiving at the time [her] injury occurred.'" 115 N.C. App. 293, 299, 444 S.E.2d 659, 662 (1994) (first alteration in original) (quotations and citations omitted).

In the instant case, the Full Commission made some nine findings of fact and conclusions of law regarding plaintiff's 11 November 1994 on-the-job injury and its resolution. Although

plaintiff argues to the contrary, the evidence presented before the Commission tended to show that she injured her back while lifting a steel mat during and in the course of her employment with defendant; that plaintiff's injury had resolved itself; that plaintiff had been released to return to work on 25 November 1994; that plaintiff's symptoms reported on 21 March 1995 were not consistent with a herniated disc at L5-S1; that on 25 June 1995, plaintiff fell onto concrete pavement at a concert; and that subsequent treatment for a herniated disc at the L5-S1 level was rendered after the 25 June 1995 fall. While there may be evidence to support findings and conclusions to the contrary, we hold that there was indeed sufficient evidence to support the Commission's findings of fact. We further hold that the findings support the Commission's conclusions that plaintiff's herniated disc was not the result of her 11 November 1994 on-the-job injury and that the injury had resolved itself by 25 November 1995. Hence this argument fails.

Further, as the Commission properly found and concluded that plaintiff's disability from the 11 November 1994 on-the-job injury had resolved itself and that she was released by her treating physician to return to work without restriction on 25 November 1994, plaintiff had the burden to show that she continued to be disabled after 25 November 1994. Plaintiff's argument to the contrary in this regard also fails.

Having found that plaintiff's arguments fail, we affirm the opinion and award of the Full Commission.

Affirmed.

Judges LEWIS and SMITH concur.

Report per Rule 30(e).