NO. COA01-346

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

SARAH MAE CRAWFORD,
Plaintiff-Employee,

v. North Carolina Industrial Commission
I.C. File No. 624829

GREENSBORO INNKEEPER,
Defendant-Employer,

and

ZENITH INSURANCE COMPANY,
Defendant-Carrier.

Appeal by plaintiff from Opinion and Award entered 21 November 2000 by the Full Commission in the North Carolina Industrial Commission. Heard in the Court of Appeals 31 January 2002.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for plaintiff-employee.

Morris, York, Williams, Surles & Barringer, LLP, by G. Lee Martin and Keith B. Nichols, for defendants.

BRYANT, Judge.

This appeal arises out of the Full Commission's denial of plaintiff's claim for workers' compensation benefits after she allegedly slipped and fell at work. Plaintiff, Sarah Mae Crawford, worked as a cook in the employees' cafeteria at Greensboro Innkeeper. Plaintiff

alleges that on or about 5 June 1995, she slipped and fell on a wet floor, injuring her head, back and left knee. There were no witnesses to the incident.

Plaintiff filed a Form 18 in March or April 1996--at least nine months later--to notify her employer of the injury.**[Note 1]** Plaintiff's claim was denied on 9 January 1997 for the following reasons: failure to report accident to employer; failure to provide medical authorization and names of treating physicians; and failure to show that she suffered an injury solely and directly related to employment. Plaintiff requested a hearing on 27 January 1997. The deputy commissioner denied her claim, concluding that plaintiff failed to carry her burden of proving that she was injured by an accident during the course of her employment on 5 June 1995. Plaintiff appealed to the Full Commission [Commission], which affirmed on the same grounds. Plaintiff appeals to this Court from the Commission.

The Workers' Compensation Act is to be liberally construed to achieve its purpose, namely, to provide compensation to employees injured during the course and within the scope of their employment. *Lynch v. M. B. Kahn Constr. Co.*, 41 N.C. App. 127, 130, 254 S.E.2d 236, 238 (1979). "When reviewing decisions by the Industrial Commission, the Court of Appeals is limited to determining whether there is *any* competent evidence to support the Commission's findings, and whether the findings support the Commission's legal conclusions." *Cummins v. BCCI Constr. Enters.*, ___ N.C. App. ___,___, 560 S.E.2d 369, 371 (2002) (citing *Watson v. Winston-Salem Transit Auth.*, 92 N.C. App. 473, 374 S.E.2d 483 (1988)). The Commission's conclusions of law are fully reviewable. *Lanning v. Fieldcrest-Cannon, Inc.*, 352 N.C. 98, 530 S.E.2d 54 (2000).

Plaintiff argues that the Commission erred in denying her award because Greensboro Innkeeper waived its right to contest or deny a claim by failing to timely respond to plaintiff's

Form 18. Specifically, plaintiff argues that a Form 18 is a pleading; therefore, Forms 21, 60, 61 and 63 are responsive pleadings to which the North Carolina Rules of Civil Procedure apply. We find nothing in the record that indicates this issue was before the Full Commission. Rule 701 of the Rules of the Industrial Commission states, "Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument thereon shall not be heard before the Full Commission." Workers' Comp. R. of N.C. Indus. Comm'n 701(3), 2000 Ann. R. (N.C.) 771. Plaintiff did not raise the issue in her Form 44 application for review before the Commission, and the Commission's Opinion and Award contains no indication that it considered the issue. "The *record* must in some way reflect that the matter was before the full Commission." *Joyner v. Rocky Mount Mills*, 85 N.C. App. 606, 608, 355 S.E.2d 161, 162 (1987). Because plaintiff raises this argument for the first time on appeal to this Court, we decline to address this issue. *See id.*

Plaintiff also argues that the Commission erred in concluding that plaintiff failed to prove that she sustained a compensable injury. Specifically, plaintiff argues that there was uncontroverted testimony and findings of fact in support of her contention that she injured her head, back and left knee in an accident at work. We disagree.

"Under the North Carolina Workers' Compensation Act, an injury arising out of and in the course of employment is compensable only if it is caused by an 'accident,' and the claimant bears the burden of proving an accident has occurred." *Calderwood v. The Charlotte-Mecklenburg Hosp. Auth.*, 135 N.C. App. 112, 115, 519 S.E.2d 61, 63 (1999) (citations omitted), *review denied*, 351 N.C. 351, 543 S.E.2d 124 (2002); *see* N.C.G.S. §97-2(6) (2001). "[T]he Commission is the sole judge of the credibility of the witnesses as well as how much weight their testimony should be given." *Bailey v. Sears Roebuck & Co.*, 131 N.C. App. 649, 653, 508 S.E.2d

831, 834 (1998) (citing *Hedrick v. PPG Indus.*, 126 N.C. App. 354, 357, 484 S.E.2d 853, 856 (1997)).

The Commission found that plaintiff failed to establish that she was injured at work. Specifically, the Commission found, "Dr. Carter first examined plaintiff on 6 June 1995. Plaintiff reported that she was experiencing low back pain with radiation into her legs. Plaintiff reported that she did a lot of heavy lifting at work, but she did not report a fall at work." The Commission further found that "[p]laintiff returned to Dr. Carter on 28 June 1995. Plaintiff still did not report any fall at work. "When plaintiff did report the alleged injury to defendant's personnel director, the Commission found that "there is nothing . . . to indicate when this fall occurred or that plaintiff sustained an injury as a result of the fall." Evidence in the record supports the Commission's findings. For example, plaintiff was treated at Moses Cone Memorial Hospital Emergency Room on 5 June 1995--the alleged date of the accident--for lower back pain that had persisted *for several weeks*. The emergency room registration form quotes plaintiff as stating, "I DON'T KNOW IF IT HAPPENED ON THE JOB OR AT HOME." Furthermore, the "statement of insured" submitted to Dr. Carter, who treated plaintiff the next day, indicates that the "disability" was caused by an accident in *April* as a result of lifting "heavy things in cafe." Dr. Carter's statement of disability on 12 June 1995 indicates that plaintiff suffered from "Sciatica Degenerative Arthritis Left Hip." The statement also indicates that plaintiff did not report that the injury was due to plaintiff's employment, and that the symptoms first appeared approximately two years before the evaluation (i.e., sometime in 1993).

The first indication in the record that plaintiff slipped and fell at work is a 7 January 1997 "Report of Contact" by the North Carolina Department of Human Resources Division of Vocational Rehabilitation Services. The report indicates that plaintiff "got hurt on her job 1995--

broken ligaments in legs; slight concussion (fell on wet spot on the floor)." A note in a disability determination evaluation dated 14 March 1997 states that plaintiff hurt her back and hip. Plaintiff indicates in a 6 May 1997 psychiatric review that she lost her job because she slipped on a wet spot on the cafeteria floor, hitting her leg and causing a "busted" left knee cap and "some bonebreaking." Furthermore, a 27 October 1997 report by Dr. Jerome O. Spruill, a specialist in cardiology and internal medicine, indicates that plaintiff complained of leg and back pain due to a slip and fall injury in June 1996 in which she hit her head and hurt her knee.

Based on the conflicts between plaintiff's testimony and the record, it is apparent that the Commission did not find plaintiff's testimony to be credible. Because there was competent evidence to support the Commission's findings and their ultimate conclusion that plaintiff did not sustain a compensable injury by accident arising from her employment, this assignment of error is overruled.

For the reasons stated above, we affirm.

AFFIRMED.

Judges TIMMONS-GOODSON and SMITH concur.

Report per Rule 30(e).

NOTE

1. We note that plaintiff argues that she filed a Form 18 in June 1995, citing a copy of plaintiff's Form 18 in the record on appeal. Plaintiff apparently filled in "6 1995" as the date she completed the Form 18. However, the form was stamped twice by the Industrial Commission, indicating filing dates of 22 March 1996 and April 1996.