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NO. COA01-517

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

BOBBY ALLGOOD,
Plaintiff-Appellant

v.

North Carolina Industrial Commission
I.C. File No. 633701

PARSONS TRUCKING COMPANY,
Defendant-Appellee;

SELF-INSURED (AIG CLAIMS
SERVICES, INC.),
Servicing Agent.

Appeal by plaintiff from opinion and award entered 21 February 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 January 2002.

Franklin Smith for plaintiff-appellant.

Teague, Campbell, Dennis, & Gorham, L.L.P., by Melissa R. Garrell and Tara L. Davidson, for defendant-appellee.

BRYANT, Judge.

Plaintiff appeals from the denial of his claim for workers' compensation benefits. Plaintiff, employed by defendant as a long distance truck driver, sought compensation for injuries he allegedly sustained to his knee and back when he fell while disembarking from his truck cab on 12 February 1996. He filed a request for a hearing on 12 February 1998. Defendant responded to the request for a hearing by denying compensability on the ground that plaintiff did

not sustain an injury by accident arising out of and in the course of employment or develop an occupational disease. Deputy Commissioner Edward Garner, Jr., heard lay testimony on 3 December 1998 and after receiving deposition testimony of two medical witnesses, filed an opinion and award denying compensation. Plaintiff appealed to the Full Commission, which also denied compensation based upon the following findings of fact:

1. Plaintiff, who was sixty-one years old at the time of the hearing before the Deputy Commissioner, worked as a truck driver most of his adult life.

2. On 12 February 1996, plaintiff was employed by defendant as a long distance truck driver. On that date, as he was climbing out of the cab of his truck in his usual and customary fashion, he experienced a sharp pain in his knee and fell to the ground. Plaintiff did not sustain an injury to his back or knee as a result of the fall.

3. When plaintiff returned to North Carolina with his truck on 13 February 1996, he did not indicate on the driver inspection report for that trip that the truck seat was broken.

4. On 16 February 1996, plaintiff was seen by Larry A. Pearce, M.D., for complaints of neck and back pain. Plaintiff reported a history of worsening back and neck pain over the preceding year. He also indicated that his pain was aggravated by his job as a long distance truck driver. Plaintiff did not describe injuring himself as the result of a fall from his truck, and he did not initially report that his truck seat was broken.

5. Plaintiff suffers from degenerative disc disease of the cervical and lumbar spine. This is an ordinary disease of life which is common in persons of plaintiff's age due to wear and tear of the body which accumulates over time.

6. Plaintiff's claim that he injured his back when he fell from his truck on 12 February 1996 is not accepted as credible.

7. The greater weight of the evidence fails to show that plaintiff's degenerative disc disease of the lumbar and cervical spine was caused or significantly contributed to by his employment with defendant or that plaintiff's job placed him at an increased

risk for contracting his condition as compared to members of the general public not so employed.

8. Even if plaintiff made three to six trips with a broken seat, the repetitive slapping of that seat may have aggravated his symptoms, but it did not cause, aggravate, or accelerate the degenerative changes present in plaintiff's spine.

Based upon these findings of fact, the Full Commission concluded plaintiff did not sustain an injury by accident arising out of and in the course of his employment with defendant. It also concluded plaintiff failed to prove that his degenerative disc disease was characteristic of and peculiar to his employment with defendant and that his employment caused, or significantly contributed to, the development of the condition.

Plaintiff contends that the Commission's findings of fact, conclusions of law, and award are contrary to the greater weight of the evidence. We disagree.

Appellate review of an opinion and award of the Industrial Commission is limited to a determination of whether the Commission's findings of fact are supported by the evidence and whether the findings support the conclusions of law. *Norton v. Waste Management, Inc.*, ___ N.C. App. ___, ___, 552 S.E.2d 702, 704 (2001). The appellate court does not weigh the evidence but merely determines whether competent evidence exists to support the findings made by the Commission. *Norton*, ___ N.C. App. at ___, 552 S.E.2d at 705. If such evidence exists, then the Commission's findings are conclusive and binding even though the record may contain evidence to support contrary findings. *Oliver v. Lane Co.*, 143 N.C. App. 167, 170, 554 S.E.2d 606, 608 (2001).

"To be compensable, any incapacity to earn wages, resulting either from an injury by accident arising out of and in the course of the employment or from an occupational disease, must spring from the employment." *Morrison v. Burlington Industries*, 304 N.C. 1, 13, 282

S.E.2d 458, 467 (1981). Disability that is caused by and resulting from a disease is compensable only when the disease is an occupational disease or is aggravated or accelerated by an occupational disease or injury by accident arising out of and in the course of the employment. *Walston v. Burlington Industries*, 304 N.C. 670, 679-80, 285 S.E.2d 822, 828 (1982). Since degenerative disc disease is not among the occupational diseases listed in N.C.G.S. §97-53, it qualifies as one under the catchall definition of N.C.G.S. §97-53(13) only if it is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment. *See Griffiths v. Thomasville Furniture Co.*, 65 N.C. App. 369, 371, 309 S.E.2d 277, 279 (1983), *review denied by* 310 N.C. 477, 312 S.E.2d 884 (1984).

Applying these principles to the present case, we find evidentiary support in the record for the Commission's findings of fact and decision. Dr. Larry A. Pearce testified that plaintiff's degenerative disc disease was not caused by any specific injury but by chronic repetitive motion. Dr. David N. DuPuy testified that plaintiff's degenerative disc disease was not caused by or aggravated by any unsecured or loose seat. Dr. DuPuy also testified that studies show "almost conclusively that no occupation causes a degenerative disc. It's familial. It's genetic. It has to do with how the DNA forms the disc in embryonic development."

We hold the Commission correctly concluded that plaintiff failed to show he has an occupational disease because the condition was not shown to be characteristic of and peculiar to his employment. Plaintiff also failed to show he sustained an injury by accident arising out of and in the course of his employment.

The opinion and award is affirmed.

Affirmed.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).