

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-1657

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2010

ANA GARCIA,
Employee,
Plaintiff,

v.

HUFFBO, LLC (BOJANGLES),
Employer,

North Carolina
Industrial Commission
I.C. No. 635388

THE HARTFORD,
Carrier,
Defendants.

Appeal by defendant from Opinion and Award entered 7 August 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 12 May 2010.

Timothy D. Welborn, P.A. by John R. Smerznak, Jr., for plaintiff-appellee.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P. by M. Duane Jones and Gerald A. Stein, II, for defendant-appellants.

STROUD, Judge.

Plaintiff was awarded, *inter alia*, "ongoing total disability compensation" and "pay for all related medical expenses[.]" Defendant appeals, arguing that the Full Commission erred in concluding "plaintiff sustained a compensable occupational disease" and "in awarding ongoing temporary total disability" to plaintiff.

(Original in all caps.) As we conclude that the opinion and award of the Full Commission contains insufficient findings of fact for this Court to conduct a proper review, we remand for further findings of fact.

I. Background

On 7 August 2009, the Full Commission filed an opinion and award. The uncontested findings of fact in the opinion and award establish that plaintiff was a biscuit maker for defendant.

Plaintiff normally worked five (5) days per week from 4:00 a.m. to 1:00 p.m. Making biscuits from scratch included preparing the dough, which required plaintiff to mix ingredients in a bowl and to use a roller to then stretch and flatten the dough. Plaintiff then used a mold to cut the dough and placed each mold of dough on a tray that was then put in the oven.

Plaintiff informed her managers she was experiencing swelling and pain in her hands. Plaintiff was later diagnosed with several disorders, including carpal tunnel syndrome. One of plaintiff's physicians "performed carpal tunnel release procedures on October 17, 2007 and November 28, 2007." Plaintiff "was unable to earn any wages in her position with defendant-employer or in any other employment for the period of June 1, 2006 through the present and continuing." The Full Commission awarded plaintiff benefits including "ongoing total disability compensation at the rate of \$213.33 per week for the period of June 1, 2006 through the present and continuing until such time as she returns to work or further Order of the Commission" and "all related medical expenses incurred or to be incurred by plaintiff as a result of her compensable

bilateral carpal tunnel syndrome and related surgical procedures[.]” Defendant appeals.

II. Standard of Review

On appeal from an opinion and award of the North Carolina Industrial Commission, the standard of review 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. The Industrial Commission's findings of fact are conclusive on appeal if supported by competent evidence even though there is evidence to support a contrary finding. The full Commission is the sole judge of the weight and credibility of the evidence. This Court is not at liberty to reweigh the evidence and to set aside the findings simply because other conclusions might have been reached. This Court reviews the Commission's conclusions of law *de novo*.

Roberts v. Century Contr'rs, Inc., 162 N.C. App. 688, 690-91, 592 S.E.2d 215, 218 (2004) (citations, quotation marks, ellipses, and brackets omitted).

III. Compensable Occupational Disease

Defendant contends that “the Full Commission erred in concluding that employee-plaintiff sustained a compensable occupational disease pursuant to N.C.G.S. § 97-53(13)[.]”

For an occupational disease to be compensable under N.C.G.S. § 97-53(13) it must be

(1) characteristic of persons engaged in the particular trade or occupation in which the plaintiff is engaged; (2) not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and (3) there must be a causal connection between the disease and the plaintiff's employment.

Chambers v. Transit Mgmt., 360 N.C. 609, 612, 636 S.E.2d 553, 555 (2006) (citation, quotation marks, and brackets omitted). Defendant argues that the Full Commission failed "to make any findings of fact as to the cause of Plaintiff-Appellee's carpal tunnel syndrome or as to whether the Plaintiff-Appellee's employment exposed Plaintiff-Appellee to a greater risk of contracting carpal tunnel than the general public." Defendant directs our attention to finding of fact 15 because "the Full Commission merely stated a conclusion of law couched as a finding of fact[.]"

Our Supreme Court has stated that

[t]o enable the appellate courts to perform their duty of determining whether the Commission's legal conclusions are justified, the Commission must support its conclusions with sufficient findings of fact. The Commission is not required to make a finding as to each detail of the evidence or as to every inference or shade of meaning to be drawn therefrom. But specific findings of fact by the Commission are required. These must cover the crucial questions of fact upon which plaintiff's right of compensation depends. If the findings of fact of the Commission are insufficient to enable the Court to determine the rights of the parties upon the matters in controversy, the proceeding must be remanded to the end that the Commission make proper findings.

Gregory v. W.A. Brown & Sons, 363 N.C. 750, 761, 688 S.E.2d 431, 439 (2010) (citations omitted).

Finding of fact 15 is the only finding which addresses causation or plaintiff's heightened risk of developing carpal tunnel syndrome in a manner favorable to plaintiff. Finding of fact 15 stated that "[p]laintiff's employment with defendant-

employer caused or significantly contributed to the development of her bilateral carpal tunnel syndrome. Additionally, plaintiff's employment with defendant-employer exposed her to an increased risk of developing bilateral carpal tunnel syndrome as opposed to members of the general public not so employed." While plaintiff directs our attention to findings of fact 2 and 3 to support finding of fact 15, these two findings are merely descriptions of plaintiff's life and employment and in no way state any facts as to causation or plaintiff's heightened risk of developing carpal tunnel syndrome. Further highlighting the Full Commission's cursory finding as to causation and plaintiff's heightened risk of developing carpal tunnel syndrome is the fact that conclusion of law 2 is a verbatim repetition of finding of fact 15 with citations added. While we note that the record may contain competent evidence upon which the Full Commission *could* have based findings of fact regarding causation and a heightened risk of developing carpal tunnel syndrome, the Full Commission failed to make sufficient findings of fact based on the competent evidence in order for this Court to conduct a proper review. We must remand to the Full Commission for further findings. *See id.* As we are remanding for further findings of fact, we need not address defendant's other issues on appeal.

IV. Conclusion

As we conclude that the Full Commission did not make sufficient findings of fact in order for this Court to make a determination regarding a compensable occupational injury, we remand for further findings.

REMANDED.

Judges MCGEE and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).