Sellers
Reggie
Scott

NO. COA99-370

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2000

ANGELA BAILEY,
Employee/Plaintiff,

v.

N.C. Ind. Commission
I.C. No. 650446

GLENDALE HOSIERY COMPANY,
Employer/Defendant,

and

HARTFORD INSURANCE COMPANY,
Carrier/Defendant.

Appeal by plaintiff from Opinion and Award of the North Carolina Industrial Commission filed 29 January 1999. Heard in the Court of Appeals 6 January 2000.

Robert J. Willis, for plaintiff-appellant.

Cranfill, Sumner & Hartzog, L.L.P., by Jonathan C. Anders and Jaye E. Bingham, for defendants-appellees.

JOHN, Judge.

Plaintiff appeals an Opinion and Award of the North Carolina Industrial Commission (the Commission) denying her claim for disability compensation. We affirm the Commission.

Pertinent facts and procedural information include the following: Plaintiff commenced employment with defendant Glendale

Hosiery Company (Glendale) as a line closer in August of 1987. Her job duties included stretching a panty hose leg onto a rotating arm of a seven-armed machine and positioning the hose such that the machine could sew two legs together. After filling a product bag with 60 to 96 sewn pairs of hose, plaintiff was then required to remove the first six pairs and the thirteenth pair from the bag and pull each of these sewn pairs onto a board for quality inspection. Plaintiff was paid on a production basis with incentive pay.

In August 1995, plaintiff became pregnant. She subsequently presented to Dr. Anuj Sharma (Dr. Sharma), a licensed family practitioner, on 22 February 1996, complaining of coldness, tingling and swelling in her hands. Plaintiff testified she had experienced periodic numbness in her fingers and pain in her hands prior to pregnancy, but had not been medically treated and did not report the problem to her employer because she "didn't know what it was, and [her mother told her it] maybe . . . poor circulation." Dr. Sharma diagnosed plaintiff's condition as "pregnancy induced carpal tunnel syndrome." During plaintiff's last trimester of pregnancy, Dr. Sharma also diagnosed pre-eclampsia, involving pain in the hands and swelling of the feet and legs.

Plaintiff took maternity leave from her employment on 8 April 1996 and returned to her previous position on 10 June 1996.

Plaintiff testified that after childbirth and returning to work, her hands and wrists "still got numb[], [and] still [gave] [her] pain to the point where [she] couldn't work." Plaintiff related her pain "continued at the same level" she had experienced during pregnancy. On 11 July 1996, plaintiff reported hand and wrist problems to the plant nurse and to her supervisor at Glendale. According to plaintiff, this was the first report of pain she made to Glendale.

Plaintiff submitted a claim for compensation based upon an occupational disease, which claim was denied 24 July 1996. Thereafter, plaintiff continued to complain to Glendale regarding hand and wrist problems, which occasionally necessitated her leaving work.

On 3 February 1997, plaintiff again presented to Dr. Sharma with hand and wrist pain. He referred plaintiff for electrodiagnostic studies on her hands and wrists, and excused plaintiff from work beginning 6 February 1997 and continuing through 20 February 1997. The electronic tests revealed bilateral median nerve compression mononeuropathy, indicating carpal tunnel syndrome. Dr. Sharma referred plaintiff to Dr. Nagasayana Rao Kothapalli (Dr. Kothapalli), a general surgeon, who diagnosed plaintiff with bilateral carpal tunnel syndrome which was worse in

the left hand. Dr. Kothapalli removed plaintiff from work 19 March 1997, performed a left carpal tunnel surgical release 21 March 1997, and released plaintiff to resume normal duties on or about 16 April 1997 after she had informed him that she was no longer experiencing numbness in her left hand. Within two weeks of her 17 April 1997 return to work, plaintiff returned to Dr. Kothapalli complaining of symptoms identical to those she had suffered prior to surgery. Dr. Kothapalli instructed plaintiff to avoid repetitive movement for six weeks. According to plaintiff, Glendale had no light duty positions available at that time so she returned to her assignment as a line closer. Plaintiff related that the pain, numbness and tingling she had encountered before surgery then continued until July 1997 when Glendale assigned her to another position.

On 6 March 1997, plaintiff filed a Form 33 Request for Hearing asserting she had suffered an occupational disease beginning 26 June 1996. Glendale and its insurance carrier Hartford Insurance Company (jointly, defendants) denied liability and plaintiff filed an amended Form 18 Notice of Accident to Employer on 3 June 1997, alleging her disability commenced 8 April 1996.

In an Opinion and Award filed 25 June 1998, the Deputy Commissioner denied plaintiff's claim. Plaintiff appealed and the

Full Commission filed an Opinion and Award 29 January 1999 affirming the Deputy Commissioner's decision.

The Commission's Opinion and Award contained the following pertinent findings of fact:

> 2. Plaintiff began working for defendant-employer as a line closer in August 1987. Plaintiff's duties included grasping "leg blanks" and stretching them onto the rotator rocker arm so that the two tubes of pantyhose could be mechanically sewn together. Plaintiff also inspected every sixth pair of pantyhose for stitching quality.
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> 3. In August 1995, plaintiff became pregnant . . . [and] [o]n 22 February 1996 . . . was diagnosed with pregnancy induced carpal tunnel syndrome after complaining of bilateral hand coldness, tingling and swelling. Plaintiff, however, never reported hand or wrist pain, tingling or numbness to defendant-employer.
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> 4. During the last trimester of plaintiff's pregnancy, she was diagnosed with pre-eclampsia which also caused pain in her hands and arms.
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> 5. Plaintiff missed work due to maternity leave from early April 1996 until early June 1996.
>
> 6. Plaintiff returned to work 10 June 1996. On 11 July 1996 plaintiff reported to the plant nurse . . . that she was having problems with her hands and wrists. Through the remainder of 1996, plaintiff complained of problems in her hands and wrists to [her] supervisor. However, the medical records of Drs. Sharma and Kothapalli do not reflect that plaintiff's condition worsened once she

returned to work following her maternity leave.

7. In February 1997 . . . [Dr. Sharma] took plaintiff out of work from 6 February until 16 February 1997. 6 February 1997 was the first day plaintiff had ever missed work as a result of her carpal tunnel syndrome, or for pain, tingling and numbness in her hands and wrists.

. . . .

9. Dr. Kothapalli subsequently diagnosed plaintiff with bilateral carpal tunnel syndrome, which was much worse on the left. Dr. Kothapalli performed a surgical release of plaintiff's left carpal tunnel median nerve on 21 March 1997. Plaintiff was unable to work following the surgery from 19 March 1997 to 16 April 1997.

10. Plaintiff returned to work on 17 April 1997.

11. Dr. Sharma, who did not treat, evaluate or examine plaintiff prior to February 1996, opined that carpal tunnel syndrome in pregnancy is very common and that it was possible that plaintiff's carpal tunnel syndrome could remain symptomatic for several months following plaintiff's pregnancy. Dr. Sharma did not view first-hand plaintiff's job duties; however, she stated that plaintiff's job duties as described by plaintiff's counsel could have contributed to plaintiff's development of carpal tunnel syndrome. Although Dr. Sharma opined that plaintiff's job duties probably put plaintiff at an increased risk of developing carpal tunnel syndrome, she could not opine with a reasonable degree of medical certainty that plaintiff's job duties with defendant-employer significantly contributed to plaintiff's development of carpal tunnel syndrome.

> 12. Dr. Kothapalli, who did not examine, evaluate or treat plaintiff prior to March 1997, could not opine to a reasonable degree of medical certainty exactly what caused plaintiff's carpal tunnel syndrome. Dr. Kothapalli opined that pregnancy can cause carpal tunnel syndrome and that is was possible that pregnancy induced carpal tunnel syndrome, such as plaintiff's, could remain symptomatic for several months following pregnancy. Dr. Kothapalli further stated that pre-eclampsia and obesity are also contributing factors of carpal tunnel syndrome.
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> 13. Dr. Kothapalli did not view plaintiff's job activities first-hand, but based upon a description of those duties . . . opined that plaintiff's job duties probably put plaintiff at an increased risk of developing carpal tunnel syndrome. However, he could not opine with a reasonable degree of medical certainty that plaintiff's job duties with defendant-employer significantly contributed to plaintiff's development of carpal tunnel syndrome.

Based upon its factual findings, the Commission rendered the following conclusions of law:

> 2. In the instant case, the medical evidence is insufficient to establish that plaintiff's employment with defendant-employer was causally related to plaintiff contracting carpal tunnel syndrome. Therefore, she is not eligible for compensation under the Act.
>
> 3. The competent evidence in the record fails to establish that plaintiff's job duties with defendant-employer aggravated or enhanced her condition in any way. Plaintiff has not suffered an aggravation of a pre-existing or

> job related condition; therefore, she is not eligible for compensation under the Act.

Plaintiff appeals.

Appellate review of an award by the Industrial Commission is limited to consideration of

> whether there is any competent evidence in the record to support the Commission's findings of fact and whether these findings support the Commission's conclusions of law.

Hedrick v. PPG Industries, 126 N.C. App. 354, 357, 484 S.E.2d 853, 856, *disc. review denied*, 346 N.C. 546, 488 S.E.2d 801 (1997). "The Commission's findings of fact are conclusive on appeal if supported by competent evidence," *Hoyle v. Carolina Associated Mills*, 122 N.C. App. 462, 463, 470 S.E.2d 357, 358 (1996), even in the face of evidence which would support contrary findings, *Matthews v. Petroleum Tank Service, Inc.*, 108 N.C. App. 259, 264, 423 S.E.2d 532, 535 (1992). Further, it is well settled that "the Commission is the sole judge of the credibility of the witnesses" as well as of the weight to be given their testimony. *Hedrick*, 126 N.C. App. at 357, 484 S.E.2d at 856.

In pertinent part, N.C.G.S. § 97-53 (1991) defines an occupational disease as follows:

> 13. Any disease . . . which 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.

G.S. § 97-53(13).

An employee seeking compensation pursuant to the foregoing section must prove three necessary elements:

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

Jarvis v. Food Lion, Inc., 134 N.C. App. 363, 367, 517 S.E.2d 388, 391, *disc. review denied*, 351 N.C. 356, __ S.E.2d __ (1999).

The

> first two elements are satisfied if, as a matter of fact, the employment exposed the worker to a greater risk of contracting the disease than the public generally.

Rutledge v. Tultex Corp., 308 N.C. 85, 93-94, 301 S.E.2d 359, 365 (1983).

> The third element of the test is satisfied if the employment "significantly contributed to, or was a significant causal factor in, the disease's development."

Hardin v. Motor Panels, Inc., ___ N.C. App. ___, ___, 524 S.E.2d 368, 371 (2000)(quoting *Rutledge*, 308 N.C. at 101, 301 S.E.2d at 369-70).

Under the "significant contributing factor" standard, it must be determined that but for the employment, the occupational disease "would not have developed to such an extent that it caused the physical disability which resulted in claimant's incapacity for work." *Baker v. City of Sanford*, 120 N.C. App. 783, 788, 463 S.E.2d 559, 563 (1995)(citation omitted), *disc. review denied*, 342 N.C. 651, 467 S.E.2d 703 (1996).

Plaintiff first contends the Commission used an erroneous standard of causation by implicitly requiring that her employment be the "sole cause" of her occupational disease. We do not agree.

The Commission found, *inter alia*, that neither Dr. Sharma nor Dr. Kothapalli could

> opine with a reasonable degree of medical certainty that plaintiff's job duties with defendant-employer *significantly contributed* to plaintiff's development of carpal tunnel syndrome. (emphasis added).

The Commission thereupon concluded that "the medical evidence is insufficient to establish that plaintiff's employment . . . was causally related to plaintiff contracting carpal tunnel syndrome." The standard employed by the Commission thus specifically embraced the third element of the *Rutledge* test, requiring a determination that the employment "significantly contributed to, or was a significant causal factor in, the disease's development."

Rutledge, 308 N.C. at 101, 301 S.E.2d at 369-70; *see Hardin*, _ N.C. App. at __, 524 S.E.2d at 371.

Plaintiff also argues the Commission "apparent[ly] determine[d] that causation must be established to a reasonable degree of medical certainty." Again, we disagree.

We note initially that

> in order to be sufficient to support a finding that a stated cause produced a stated result, evidence on causation "must indicate a reasonable scientific probability that the stated cause produced the stated result."

Phillips v. U.S. Air, Inc., 120 N.C. App. 538, 542, 463 S.E.2d 259, 262 (1995)(quoting *Hinson v. National Starch & Chem. Corp.*, 99 N.C. App. 198, 202, 392 S.E.2d 657, 659 (1990)), *aff'd*, 343 N.C. 302, 469 S.E.2d 552 (1996). Thus, evidence on causation is insufficient if it "raises a mere conjecture, surmise, and speculation." *Hinson*, 99 N.C. App. at 202, 392 S.E.2d at 659.

Contrary to plaintiff's assertion, the Commission *sub judice*, similarly to that in *Phillips*, found as fact that Dr. Kothapalli was unable to

> opine with a reasonable degree of medical certainty that plaintiff's job duties with defendant-employer significantly contributed to plaintiff's development of carpal tunnel syndrome.

In short, "the Commission simply determined that the evidence raised no more than a possibility," *Phillips*, 120 N.C. App. at 542, 463 S.E.2d at 262, that plaintiff's job duties significantly contributed to her development of carpal tunnel syndrome, and the Commission did not improperly decline to consider that evidence as sufficient to support an award, *see id.* (holding Commission's use of phrase "reasonable degree of medical certainty" was sufficient to satisfy legal standard of "scientific probability" of causation). Defendants correctly note that this Court in *Cooke v. P.H. Glatfelter/Ecusta*, 130 N.C. App. 220, 502 S.E.2d 419 (1998), "rejected" an argument that *Phillips* established a new burden of proof for claimants in using the terminology "reasonable degree of medical certainty," *id.* at 224, 502 S.E.2d at 422. Moreover, we noted in *Cooke* that the *Phillips* opinion was

> merely quoting language from the Industrial Commission's order in that case . . . [and] did not thereby establish a new and more onerous burden of proof for claimant.

Id.; *see Phillips*, 120 N.C. App. at 542, 463 S.E.2d at 262 (holding "evidence was insufficient, *in the words of the Commission*, because it was not based on a 'reasonable degree of medical certainty.' In other words, the Commission simply determined that the evidence raised no more than a possibility that the infection came from the drinking water and it had every right, and indeed the obligation,

to refuse to consider that evidence as sufficient to support an award" (emphasis added)). Finally, we also pointed out in *Cooke* that the *Phillips* opinion properly recognized in express terms the governing principal that causation may be proven only by evidence that "indicate[s] a reasonable scientific probability that the stated cause produced the stated result." *Phillips*, 120 N.C. App. at 542, 463 S.E.2d at 262.

Based on the foregoing and upon careful review and consideration of plaintiff's remaining arguments pertaining to the standards of causation utilized by the Commission, we hold the Commission committed no error in this regard.

Plaintiff next contends the Commission's findings that Dr. Sharma and Dr. Kothapalli could not opine that plaintiff's job duties significantly contributed to her carpal tunnel syndrome are not supported by the evidence. This contention is also unfounded.

Review of Dr. Sharma's deposition reveals she was not willing to opine, with any degree of certainty, that plaintiff's job duties significantly contributed to the latter's having contracted carpal tunnel syndrome. Dr. Sharma testified plaintiff presented to her initially at thirty-one weeks of pregnancy with complaints of hand and wrist pain and was diagnosed with "pregnancy induced carpal tunnel syndrome." Dr. Sharma stated such a condition is "very

common" in pregnancy and that she regarded plaintiff's continuing complaints following delivery of her child as normal. According to Dr. Sharma's testimony, "it is not unusual for the pain to persist like six months after" delivery.

We note also the following exchange, which occurred when Dr. Sharma was asked if plaintiff's job duties would have increased her risk of contracting carpal tunnel:

> Dr. Sharma: Carpal tunnel, I think by definition is a disease of repetitive motion . . . [s]o if that's what her job involved, then that's [sic] possibility that that contributed to it. But I did not know her before her pregnancy . . . [s]o its hard for me to sort of decide whether . . . it was there before pregnancy or pregnancy exacerbated it.
>
> . . . .
>
> Counsel: Do you have an opinion [as to whether plaintiff's kind of work increased her risk]?
>
> Dr. Sharma: Yes. It's *possible*, yes. It's *possible* that it *contributed* to it.

Throughout her testimony, therefore, Dr. Sharma refused to state with certainty that plaintiff's employment was a significant contributing factor, but rather maintained,

> it's possible that it contributed to it . . . I would certainly say it could contribute, based on the nature of [plaintiff's] job . . . [but] whether it caused it or not, that I don't know.

Such testimony indisputably supports the Commission's finding that Dr. Sharma

> opined that plaintiff's job duties probably put plaintiff at an increased risk of developing carpal tunnel syndrome, [but] she could not opine with a reasonable degree of medical certainty that plaintiff's job . . . significantly contributed to [her] development of carpal tunnel syndrome.

Plaintiff next maintains no evidence supports the Commission's finding that Dr. Kothapalli could not or did not opine with medical certainty that plaintiff's job duties significantly contributed to her development of carpal tunnel syndrome. Again, plaintiff is mistaken.

Dr. Kothapalli testified that pregnancy, pre-eclampsia and obesity could cause or contribute to the development of carpal tunnel syndrome, and that symptoms might remain up to one year following delivery in "pregnancy induced carpal tunnel syndrome." Upon being asked whether performance of plaintiff's job duties "contributed in any significant degree to the carpal tunnel syndrome," Dr. Kothapalli responded,

> [i]t's possible . . . [because] [a]ny factor that contributes to the tightening of the tunnel [with fluid], whether increased weight, swelling of the body, or other factors, or repetitive trauma, can lead to the swelling. . . . So it's possible that can happen.

Dr. Kothapalli further testified that

> [h]ow . . . she got carpal tunnel syndrome, we don't know. Maybe her obesity may be a factor. Maybe the repetitive movements, repeated trauma.

Acknowledging that many factors could have caused or contributed to plaintiff's development of carpal tunnel syndrome, Dr. Kothapalli stated he was unable to testify which factors more than likely contributed to plaintiff's condition. He noted this was in part the result of the circumstance that he first examined plaintiff in March of 1997 and had no knowledge of what, if any, symptoms of carpal tunnel syndrome she exhibited prior to pregnancy.

Our Supreme Court has established that "[a] mere possibility of causation is neither 'substantial' nor sufficient." *Walston v. Burlington Industries*, 304 N.C. 670, 679, 285 S.E.2d 822, 828 (1982)("[w]hile smoking 'was almost certain[ly] the primary etiologic agent,' there was only a 'possibility' that any portion of plaintiff's disability was caused by the inhalation of cotton dust," and "[s]uch evidence supports the findings and conclusions of the Commission that plaintiff failed to meet his burden" of proving causation under G.S. § 97-53(13)). Moreover, although "it is not necessary for doctors to use the exact wording of 'significantly contribut[ing],'" *Hardin*, ___ N.C. App. at ___, 524

S.E.2d at 371, there must be some indication that the degree of contribution is "more likely than not" a significant factor, *id.*

Competent evidence in the depositions of both physicians sustains the Commission's finding that plaintiff failed to prove a clear causal connection between her carpal tunnel syndrome and her job duties. While Dr. Sharma and Dr. Kothapalli did state that repetitive duties, such as those of plaintiff, are a known cause for carpal tunnel syndrome, both physicians refused to state with medical certainty that *plaintiff's* job duties significantly contributed to *her* development of carpal tunnel. *See Hardin*, _ N.C. App. at ___, 524 S.E.2d at 372 (causation not proven where physician "opined only that plaintiff's work as a typist was a 'contributing factor,' but was unable to specify a degree of contribution"). Both Dr. Sharma and Dr. Kothapalli repeatedly pointed out that numerous factors were to be considered, including plaintiff's obesity, pre-eclampsia and pregnancy, as well as her job duties, all of which could *possibly* contribute to carpal tunnel syndrome, and neither would attest that plaintiff's employment posed a *certain* increase in risk or was a *significant* contributor to her condition.

In addition, although evidence to the contrary may have been presented during the hearing, the Commission, as the "sole judge of

the witnesses' credibility," *Harrell v. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (citations omitted), *disc. review denied*, 300 N.C. 196, 269 S.E.2d 623 (1980), "may choose to believe all, a part, or none of any witnesses' testimony," *id.*, in weighing and evaluating "the entire evidence to determine as best it can where the truth lies," *id.* Thus, in the event of conflicting evidence, the Commission's factual determinations regarding a "causal connection" between plaintiff's job duties and her carpal tunnel syndrome are "conclusive." *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)(Commission vested with "full authority to find essential facts . . . [and this Court], may set aside findings of fact only upon the ground they lack evidentiary support").

Plaintiff next claims the Commission erred in failing to consider and evaluate all of her job duties. After careful review of the contested findings and in light of the evidence of record, we hold the Commission provided an accurate summary of plaintiff's duties which essentially reflected the description given by plaintiff during her testimony.

Plaintiff also argues the Commission failed to consider her testimony that she had complained to family members about hand pain before becoming pregnant. While the Commission must "at least

consider and evaluate all the evidence before rejecting it," *Pittman v. International Paper Co.*, 132 N.C. App. 151, 156, 510 S.E.2d 705, 709, *aff'd*, 351 N.C. 42, 519 S.E.2d 524 (1999), and must indicate in its findings that it has "considered or weighed all testimony with respect to the critical issues in the case," *Bryant v. Weyerhaeuser Co.*, 130 N.C. App. 135, 139, 502 S.E.2d 58, 62, *disc. review denied*, 349 N.C. 228, 515 S.E.2d 700 (1998), it is

> not . . . necessary that the Full Commission make exhaustive findings as to each statement made by any given witness or make findings rejecting specific evidence that may be contrary to the evidence accepted by the Full Commission,

Id. It is apparent from the Commission's Opinion and Award that it "considered all the evidence before it and was not required to make an express finding that it did so." *Pittman*, 132 N.C. App. at 157, 510 S.E.2d at 709.

Finally, plaintiff contends the Commission's finding that the

> medical records of Drs. Sharma and Kothapalli do not reflect that plaintiff's condition worsened once she returned to work following her maternity leave

was unsupported by the evidence. We disagree.

The record reveals plaintiff delivered her child 1 May 1996 and returned to work 10 June 1996. Dr. Sharma testified plaintiff thereafter visited the physician's office on 25 November 1996 and

again on 3 February 1997, but registered no complaints of wrist or hand trouble until her February 1997 visit. Dr. Sharma further related that plaintiff's complaints of pain were "exactly" the same in February 1997 as they had been during her pregnancy.

Moreover, plaintiff acknowledges in her appellate brief that

> it is true that Dr. Sharma's records do not document any complaints by [plaintiff] that the condition of her hands had worsened since her June 1996 return to work.

Additionally, the record reflects the following questioning of plaintiff, in reference to a 13 March 1997 report by Dr. Kothapalli, regarding the onset and increase of hand and wrist pain:

> Q. I want to refer you . . . to the sentence that . . . reads, "[Patient] [s]tates pain got worse since [she] became pregnant about a year ago." You told Dr. Kothapalli that since you became pregnant, you had a worsening of - you had experienced pain in your hand and wrist, is that right?
>
> A. Yeah.
>
> Q. So, and prior to becoming pregnant, you hadn't received any medical treatment for your hands or wrist, had you?
>
> A. No.
>
> Q. After you experienced pain in your hands and wrists while you were pregnant, your condition has continued at the same level since that time, has it not?

A. Yes.

Q. In other words, you've had ongoing symptoms in your hands and arms ever since you were pregnant?

A. Yes.

In short, the medical records and depositions of Dr. Sharma and Dr. Kothapalli, coupled with the testimony of plaintiff, all support the Commission's determination that plaintiff's symptoms remained essentially the same and did not worsen once she returned to work 10 June 1996.

Based upon the foregoing resolution of the arguments addressed, we decline to discuss plaintiff's assigned errors relating to the type and amount of medical benefits recoverable.

To conclude, having given thorough review to each of plaintiff's arguments, we affirm the Opinion and Award of the Commission in all respects.

Affirmed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).