Scott - affirmed
Bolch
Riggsbee - Dissent

NO. COA99-307

NORTH CAROLINA COURT OF APPEALS

Filed: 7 March 2000

FRED J. SHANNONHOUSE,
Employee,
Plaintiff,

v.

From North Carolina
Industrial Commission
I.C. File No. 658951

WEYERHAEUSER COMPANY,
Employer,

SELF-INSURED,
Defendant.

Appeal by defendant from Opinion and Award of the North Carolina Industrial Commission entered 25 January 1999. Heard in the Court of Appeals 4 January 2000.

Early & Chandler, P.A., by Robert M. Chandler, Jr., for plaintiff-appellee.

Ward and Smith, P.A., by S. McKinley Gray, III, for defendant-appellant.

EDMUNDS, Judge.

Defendant appeals an Opinion and Award of the North Carolina Industrial Commission finding that plaintiff suffered a compensable injury arising out of and in the course of his employment. We affirm.

Plaintiff Fred J. Shannonhouse began employment with defendant Weyerhaeuser Company (Weyerhaeuser) in 1990. At various times he worked as a forklift driver, an edge grader, and a patch line operator. At the time of his alleged injury, he was a tongue and

groove operator. This job required plaintiff to use a specialty saw to cut grooves in sheets of plywood. When a sheet of plywood emerged from the saw, plaintiff lifted it and placed it in a cart. However, if the plywood emerging from the saw was off-grade, plaintiff was required to lift the sheet from the table, twist, and place it on a different cart located behind him. The stack of off-grade plywood sometimes stood higher than plaintiff's shoulders.

Plaintiff testified that on 7 March 1996, as he twisted around and lifted his arms upwards to place a piece of off-grade plywood on the stack, he felt a "pull in [his] back -- in [his] lower back." Plaintiff's co-worker, James Bunch, testified that plaintiff told him sometime in March that "he thought he had hurt his back running that [tongue and groove] saw." Plaintiff also claimed that he mentioned to supervisors Jim Collier and Gary Haney he thought he hurt his back earlier that day in March; however, Mr. Collier testified that he did not "recall [plaintiff] ever telling me he had an on-the-job injury."

Other evidence indicated that plaintiff had complained of back pain prior to the 7 March 1996 incident. On 5 December 1995, plaintiff had visited Dr. Jeon, his family physician, complaining of a head cold, nausea, fever, diarrhea, and lower back pain. Dr. Jeon's diagnosis was a urinary tract infection. Plaintiff returned to Dr. Jeon's office on 7 December 1995 for a follow-up visit. Dr. Jeon's notes indicated no abnormal findings.

Plaintiff next visited Dr. Jeon on 11 March 1996, four days after the incident at work, complaining of diarrhea, stomach

cramps, and lower back pain. Dr. Jeon diagnosed plaintiff as suffering from a kidney infection and prescribed antibiotics and pain medication. Plaintiff returned to Dr. Jeon's office on 25 April 1996, still suffering from back pain. The notes of Dr. Jeon's associate, Dr. Atieh, indicated that Dr. Atieh believed plaintiff's back pain was probably due to a urinary tract infection or a muscular strain. On subsequent visits, Dr. Jeon continued to treat plaintiff's symptoms of blood in the urine, diarrhea, and lower back pain as a kidney infection. Dr. Jeon's notes did not indicate that plaintiff attributed his back pain to any particular event or illness.

On 2 August 1996, Dr. Jeon referred plaintiff to a neurosurgeon because plaintiff consistently suffered from back pain. Plaintiff met Dr. Ira M. Hardy, II, on 7 August 1996. Plaintiff told Dr. Hardy his lower back began hurting in February 1996. Dr. Hardy's examination revealed that plaintiff had a L4-S1 disk protrusion; there was also evidence plaintiff had a right L4-S1 conjoined nerve root sleeve. In addition to these findings, Dr. Hardy found that plaintiff had four lumbar vertebrae instead of the normal five. Dr. Hardy recommended that plaintiff begin physical therapy.

Plaintiff returned to Dr. Hardy on 27 August 1996 with significant back pain. Dr. Hardy removed plaintiff from work for two weeks until his physical therapy was complete and restricted plaintiff from leaving his house. After finishing physical therapy, plaintiff attempted to work four hours a day for two

weeks, performing light duties at Weyerhaeuser, but his condition regressed. Unable to work without discomfort, plaintiff quit his job in November 1996.

Plaintiff initiated a claim for workers' compensation benefits. The case originally was heard by a Deputy Commissioner, who, on 22 October 1997, filed an Opinion and Award denying plaintiff's claim. On appeal, the Full Commission reversed by a two-to-one vote on 25 January 1999. Defendant appeals.

Defendant's only issue on appeal is whether the Full Commission erred in finding that "[o]n or about 7 March 1996 plaintiff sustained an injury by accident arising out of and in the course of his employment with defendant in the form of a specific traumatic incident of the work assigned." Defendant contends that plaintiff's back problems are a condition that "occurred gradually over a period of time."

> "The standard of appellate review of an opinion and award of the Industrial Commission is limited to whether there was any competent evidence before the Commission to support its findings of fact and whether the findings of fact justify the Commission's legal conclusions and decision." *Harris v. North American Products*, 125 N.C. App. 349, 352, 481 S.E.2d 321, 323 (1997); *Pittman v. Thomas & Howard*, 122 N.C. App. 124, 129, 468 S.E.2d 283, 285-86, *disc. review denied*, 343 N.C. 513, 472 S.E.2d 18 (1996) (citations omitted). "The Commission's findings 'will not be disturbed on appeal if supported by any competent evidence even if there is evidence in the record which would support a contrary finding.'" *Harris*[, 125 N.C. App.] at 352, 481 S.E.2d at 323 (quoting *Peoples v. Cone Mills Corp.*, 316 N.C. 426, 432, 342 S.E.2d 798, 803 (1986)). The Commission, and not this Court, is "the sole judge of the credibility of witnesses" and the weight given

> to their testimony. *Pittman*[, 122 N.C. App.] at 129, 468 S.E.2d at 286 (quoting *Russell v. Lowes Product Distribution*, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993)).

Higgins v. Michael Powell Builders, 132 N.C. App. 720, 723, 515 S.E.2d 17, 19 (1999).

The North Carolina Workers' Compensation Act states:

> With respect to back injuries, . . . where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident.

N.C. Gen. Stat. § 97-2(6) (1999). Plaintiff presented competent evidence to support the Commission's finding of fact that the injury resulted from a "specific traumatic incident." Plaintiff testified as to the moment he perceived the injury occur and the event that precipitated it. He further testified that he told co-worker James Bunch about the pull, and Bunch's testimony corroborated plaintiff's testimony. The Commission credited plaintiff's testimony that he also advised supervisor James Collier about the injury. Dr. Hardy testified that the action performed by plaintiff on 7 March 1996 "could cause a lumbar disk protrusion." Although defendant presented evidence that could have supported a contrary finding by the Commission, including plaintiff's history of back pain predating the injury and Dr. Hardy's opinion that plaintiff's back pain was the result of physical labor over a period of time, we defer to the Commission's findings of fact when

supported by competent evidence. *See Harris*, 125 N.C. App. 349, 481 S.E.2d 321.

We further hold that these findings of fact support the Commission's conclusions of law. Our Supreme Court has stated, "We do not rule out the possibility that a disc injury case may arise in the future wherein the facts are so simple, uncontradictory, and obvious as to permit a finding of a causal relationship between an accident and the injury absent expert opinion evidence." *Click v. Freight Carriers*, 300 N.C. 164, 168, 265 S.E.2d 389, 391 (1980). In the case at bar, an expert did testify that plaintiff's back injury could have resulted from a discrete incident. Evidence of lay witnesses, as recited above, also supported the Commission's conclusions of law.

Because the Commission's findings of fact are supported by competent evidence and the findings of fact support the conclusions of law, the Opinion and Award of the Full Commission is affirmed.

Affirmed.

Judges GREENE and LEWIS concur.

Report per Rule 30(e).