

Affirmed
Author, Balch
Concurring, Scott
Sellers

NO. COA01-8

NORTH CAROLINA COURT OF APPEALS

Filed: 28 December 2001

GARY S. ROWE,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. 681886

E.I. DUPONT DE
NEMOURS & CO.,
Employer,

SELF-INSURED
(KEMPER RISK MANAGEMENT, Servicing Agent),
Defendant.

Appeal by defendants from opinion and award of the North Carolina Industrial Commission filed 5 September 2000. Heard in the Court of Appeals 15 October 2001.

James B. Gillespie, Jr., for plaintiff appellee.

Marshall, Williams & Gorham, L.L.P., by Ronald H. Woodruff, for defendant appellants.

PER CURIAM.

Defendants appeal from an opinion and award of the Full Industrial Commission awarding plaintiff compensation for an occupational disease arising over the course of plaintiff's employment as a chemical process operator. The Commission's opinion and award reversed an earlier opinion and award by the Deputy Commissioner.

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CLERK OF COURT
OF NORTH CAROLINA

Defendants argue that the Commission erred in failing to defer to factual findings and credibility determinations made by the Deputy Commissioner. Defendants' argument is without merit.

Appellate review of decisions by the Commission is strictly limited to (1) whether there is competent evidence to support the Commission's findings of fact; and (2) whether these findings of fact support the Commission's conclusions of law. See *Foster v. Carolina Marble and Tile Co.*, 132 N.C. App. 505, 507, 513 S.E.2d 75, 77, disc. review denied, 350 N.C. 830, 537 S.E.2d 822 (1999). It is well established that "[w]hether the full Commission conducts a hearing or reviews a cold record, N.C.G.S. § 97-85 places the ultimate fact-finding function with the Commission - not the hearing officer. It is the Commission that ultimately determines credibility, whether from a cold record or from live testimony." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998); see also *Foster*, 132 N.C. App. at 507, 513 S.E.2d at 77; *Thompson v. Tyson Foods, Inc.*, 119 N.C. App. 411, 414, 458 S.E.2d 746, 748 (1995) (affirming that the Commission is the sole judge of the weight and credibility of testimony).

In the instant case, the Commission fully supported its conclusions of law with findings of fact, which in turn were supported by competent evidence of record. The Commission had no duty to defer to earlier credibility decisions made by the Deputy Commissioner. We therefore affirm the decision of the Industrial Commission.

Affirmed.

Panel consisting of: -

Judges McGEE, TIMMONS-GOODSON, and BIGGS.

Report per Rule 30(e).