

Affirmed
Author: Mavretic
Concurring:
Ballance
Bolch

NO. COA00-1118

NORTH CAROLINA COURT OF APPEALS

Filed: 2 October 2001

ALMA TURNER,
Employee,
Plaintiff

v.

AMOCO FABRICS & FIBERS
CORPORATION,
Employer,
Defendant
and

SELF-INSURED,
Carrier,
Defendant

North Carolina
Industrial Commission
I.C. No. 682059

Appeal by plaintiff from opinion and award filed 22 June 2000
by the North Carolina Industrial Commission. Heard in the Court of
Appeals 22 August 2001.

Law Offices of Roberta L. Edwards, P.A., by Roberta L. Edwards
and Kenneth R. Massey, for plaintiff-appellant.

Robinson & Lawing, L.L.P., by Jolinda J. Babcock, for
defendant-appellees.

WALKER, Judge.

Plaintiff worked for defendant-employer as a forklift operator
from 1981 through 1997 when she retired. In the course of her
employment, on 15 April 1995, her left foot slipped on the
floorboard of the forklift causing her to strike her right lower
leg. The nurse at the plant treated the shin injury with an ice
pack and plaintiff continued to work. On 21 April 1995, when the
pain and swelling persisted, plaintiff was seen at the Nash General

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Hospital Emergency Care Center. All x-rays of her right lower leg were normal. She was diagnosed with a contusion and placed on light duty for three days. Plaintiff returned to her normal duties as a forklift operator until 29 January 1997 when she retired, shortly after turning sixty-two years old.

After plaintiff's treatment at the Emergency Care Center, she was seen by Dr. Robert G. Jones, an orthopedic surgeon, on 5 May 1995. Thereafter, Dr. Jones saw the plaintiff three additional times in 1995, once in 1996, and once in 1997. Dr. Jones testified his medical records showed that, during her visits, plaintiff did not report any complaints of pain or difficulty with her right knee. Dr. Jones diagnosed plaintiff with a soft tissue injury to the shin as a result of the workplace accident. Based on his treatment of plaintiff during her six visits, Dr. Jones was of the opinion that there was no causal connection between plaintiff's right knee problem and the 15 April 1995 accident.

On 17 June 1997, plaintiff was seen for the first time by Dr. J. Lawrence Frank, an orthopedic surgeon, at the request of her attorney. Dr. Frank testified that plaintiff did not complain of any pain in her right knee and he did not find any indication of any right knee problem. He diagnosed a soft tissue injury to plaintiff's shin and released her from his care to return to him as needed. In August 1997, plaintiff was again seen by Dr. Frank, who performed an MRI of plaintiff's right knee at the request of plaintiff and her attorney. The MRI revealed a tear of the posterior horn of the medial meniscus in the right knee which Dr.

Frank surgically repaired. Dr. Frank further testified that, in his opinion, the right knee injury was caused or aggravated by the accident on 15 April 1995. However, he also admitted that "[f]requently in older people we don't know when [the meniscus] tore, what started it" and confirmed that "there was no way to tell when [the tear in the meniscus of plaintiff's right knee] occurred." Dr. Frank also stated, "As you get older the menisci become a little more brittle and sometimes just squatting down or hitting the knee hard, a twist or a turn, can cause the meniscus to tear."

The Commission's findings include the following:

5. ... Dr. Jones, an orthopedic surgeon, saw plaintiff on six occasions from May 5, 1995 through March 21, 1997. During this timeframe [sic], plaintiff never reported any pain or difficulty in her right knee. Dr. Jones' examinations revealed no objective findings of any knee problem and he diagnosed a soft tissue injury of the shin. Dr. Jones recommended that plaintiff continue her normal work duties and advised plaintiff that the soft tissue injury would resolve with conservative treatment over time. In Dr. Jones' opinion, based upon his two years of treatment of plaintiff, the April 15, 1995 accident did not cause any problem in plaintiff's knee nor aggravate a pre-existing condition in plaintiff's knee. Dr. Jones' opinion that plaintiff did not suffer a torn medial meniscus, or any other knee injury, as a result of the April 15, 1995 accident is supported by the physician's testimony that plaintiff registered no subjective complaints of knee pain and all objective findings were normal. In light of the fact that Dr. Jones treated plaintiff shortly after the April 15, 1995 accident and continued to treat her for two years, his opinion is accepted as competent, credible and convincing.

...

9. On June 17, 1997 for the first time plaintiff saw Dr. J. Lawrence Frank, a general orthopedist, upon referral by her attorney. ... Dr. Frank found no objective indications of any knee problem and, just as Dr. Jones had done, diagnosed a soft tissue injury of the shin. Dr. Frank did not impose any work restrictions and testified that the plaintiff would have been capable of performing her job as a forklift operator....

10. In late August 1997, at the request of her attorney, plaintiff contacted Dr. Frank and asked that an MRI be scheduled. Notably, an MRI had not been recommended by Dr. Jones nor by Dr. Frank after his June 17, 1997 examination of plaintiff. Based upon plaintiff's request, an MRI was completed on August 25, 1997, revealing a small tear of the posterior horn of the medial meniscus. Dr. Jones testified that based upon plaintiff's subjective complaints and objective findings, there was no sign that this tear was present during the two years he treated her following the accident.... Dr. Jones' opinions regarding the cause of the medial meniscus tear discovered in September 1997 are accepted as credible and convincing. Dr. Frank rendered an opinion that from examining the meniscal tear, there was no way for him to tell when it occurred. Dr. Frank acknowledged that it was possible the tear came from everyday activities or degeneration. Although Dr. Frank rendered an opinion that the torn meniscus was caused by or aggravated by the April 15, 1995 accident, the Commission gives greater weight to the opinion of Dr. Jones.

Based on these findings, the Commission concluded that there was no causal connection between the 15 April 1995 workplace accident and the right knee injury diagnosed in August 1997 by Dr. Frank.

"Findings of fact by the Industrial Commission are conclusive on appeal if supported by any competent evidence." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529,

531 (1977)). "The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Id.* (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)).

Plaintiff argues Dr. Jones' opinion of no causal connection between the workplace injury and the later discovered right knee problem was based on speculation or possibility and, as such, was not competent evidence. In *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 538 S.E.2d 912 (2000), our Supreme Court has recently established what medical testimony would be sufficient to constitute competent evidence of a causal connection between an original work-related injury and a later diagnosed medical condition.

When such expert opinion testimony is based merely upon speculation and conjecture, it can be of no more value than that of a layman's opinion. As such, it is not sufficiently reliable to qualify as competent evidence on issues of medical causation.... '[A]n expert is not competent to testify as to a causal relation which rests upon mere speculation or possibility.'

Id. at 230, 538 S.E.2d at 915 (quoting *Dean v. Carolina Coach Co.*, 287 N.C. 515, 522, 215 S.E.2d 89, 94 (1975)).

In *Young*, the only testimony to support a finding of a causal connection between Ms. Young's work-related accident and her later diagnosis of fibromyalgia was from the testimony of one physician. *Id.* at 231, 538 S.E.2d at 915. He testified that "a lot of times I have no idea why someone has fibromyalgia." *Id.* He further stated that there were no physical tests which would indicate

whether a person has fibromyalgia. *Id.* He acknowledged there were several other potential causes of Ms. Young's fibromyalgia. *Id.* In sum, Ms. Young's physician theorized that because there were no other obvious contributing causes, the fibromyalgia must be related to the workplace injury. *Id.* at 232, 538 S.E.2d at 916.

Under a *Young* analysis of Dr. Frank's testimony, the Commission would not be compelled to find a causal connection between the workplace accident and the right knee injury. Dr. Frank admitted that in older people, everyday activity, such as squatting, twisting, turning or hitting the knee, could cause such a tear as plaintiff experienced. Furthermore, the Commission found that the plaintiff's testimony about her retirement as a result of her knee problem was not credible. Most importantly, Dr. Jones testified that based on his experience as an orthopedic surgeon and his more than two years of treating the plaintiff, his opinion was that she did not suffer a right knee injury as a result of the 15 April 1995 accident. This opinion is competent and sufficient to support the findings of the Commission, notwithstanding that there may have been some evidence to the contrary. It is within the prerogative of the Commission to weigh the testimonies of Dr. Jones and Dr. Frank and to give more credence to the testimony of Dr. Jones.

A review of the Commission's opinion and award reveals there was competent evidence to support its findings and the conclusion that the plaintiff did not present sufficient evidence to establish there was a causal connection between her 15 April 1995 workplace

injury and her right knee problem which was diagnosed after she retired.

Therefore, the opinion and award of the Commission is Affirmed.

Judges MCGEE and HUDSON concur.

Report per Rule 30(e).