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NO. COA02-1513

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2003

ELISEO MARTINEZ,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 693345

JAMES E. GODWIN, d/b/a
J.E.G. CONSTRUCTION COMPANY,
Employer,

HARLEYSVILLE INSURANCE COMPANY,
Carrier-Defendants.

Appeal by Defendants from Opinion and Award filed 2 July 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 September 2003.

Brenton D. Adams, for the Plaintiff-Appellee.

Scott J. Lasso, for the Defendants-Appellants.

WYNN, Judge.

From the North Carolina Industrial Commission's Opinion and Award favoring Plaintiff Eliseo Martinez (employee), Defendants J.E.G. Construction Company, Inc. (employer) and Harleysville Insurance Co. (workers compensation insurance carrier) appeal. Defendants contend the Commission: (I) failed to make findings of fact or conclusions of law relating to the issue of whether plaintiff's injuries arose out and in the course and scope of his employment and (II)

made unsupported findings of fact and conclusions of law relating to the issue of whether plaintiff was totally disabled. On review, we affirm the Opinion and Award of the Commission.

The record on appeal shows the parties presented competent evidence showing that Martinez worked for J.E.G. Construction Company as a cement finisher for five or six weekdays during the hours of 6:00 a.m. until 9:00 or 10:00 p.m. In addition to his weekly wages of approximately \$450.00, J.E.G. Construction Company provided rent-free housing and transportation to and from work with its foreman, John Dodd.

This matter arose on the morning of 1 November 1996 when Dodd drove a company truck and trailer to pick up Martinez and other company employees who shared a house. The trailer contained work materials for a new job site in Zebulon, North Carolina. At the house, Dodd picked up Martinez and the other employees. However, on the way to the Zebulon job site, one of the trailer wheels began to wobble causing Dodd to pull the truck over. Thereafter, when Martinez got out to change the tire, a motorcycle struck and critically injured him.

Following the company's denial of workers' compensation benefits to Martinez, he filed a claim for benefits resulting in a favorable award from Deputy Commissioner Margaret Morgan Holmes which was upheld on appeal to the Commission. From the Commission's Opinion and Award, Defendants appeal to this Court.

On appeal, Defendants first argue that the Commission failed to make findings of fact or conclusions of law relating to the issue of whether Plaintiff's injuries arose out of and in the course and scope of his employment. We disagree.

North Carolina law provides an exception to the general rule that an employee may not recover for injuries suffered while going to and from work in instances where "the employer, as an incident to the contract of employment, provides the means of transportation to and from the

place where the work of employment is performed.” *Harris v. Jack O. Farrell, Inc.*, 31 N.C. App. 204, 208, 229 S.E.2d 45, 47 (1976).

In this case, the Commission modified and adopted the findings of fact and conclusions of law of Deputy Commissioner Holmes which found that as part of Martinez’s compensation, J.E.G. Construction Company provided rent-free housing and transportation to and from work; Martinez worked from 6:00 a.m. to 9:00 or 10:00 p.m.; the company foreman, Dodd, provided the transportation for Martinez in the company truck; on the date of the incident, Dodd picked up Martinez to take him and other employees to work in Zebulon; on the way to Zebulon, a truck tire began to wobble and Martinez got out to fix it; while fixing the tire, Martinez was injured. Additionally, the Commission cited the stipulation by the parties that “All parties admit that on November 1, 1996, the plaintiff was injured by accident”.

We hold that these factual findings are sufficient to support the conclusion that Plaintiff sustained an injury by accident arising out of and in the course of his employment with defendant-employer.

Likewise, the record shows competent evidence to support the Commission’s findings of fact relating to the issue of whether plaintiff was totally disabled. Indeed, Dr. Edward Massey, a neurologist, testified that plaintiff could not return to his present job; had difficulty paying attention; loses track; and does not understand all the nuances of taking care of himself. His testimony was corroborated by the testimony of Dr. Ibrahim Oudeh, another physician. In short, the record shows competent evidence of the Commission’s findings of fact which in turn support the conclusion that plaintiff was totally disabled.

Affirmed.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).