An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-126

NORTH CAROLINA COURT OF APPEALS

Filed: 6 January 2004

LINDA S. DILLARD, Widow of
WALTER DILLARD,
Employee,
Plaintiff,

v.

MERCHANTS, INCORPORATED,
Employer;

SAFECO INSURANCE,
Carrier,
Defendants.

North Carolina Industrial Commission
I.C. File No. 706202

Appeal by plaintiff from opinion and award entered 19 September 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 November 2003.

Kennedy, Kennedy, Kennedy & Kennedy, L.L.P., by Harvey L. Kennedy and Harold L. Kennedy, III, for plaintiff-appellant.

Stiles Byrum & Horne, L.L.P., by Henry C. Byrum, Jr., for defendant-appellees.

EAGLES, Chief Judge.

Plaintiff appeals from an opinion and award by the Industrial Commission in a workers' compensation matter. Plaintiff's husband, Walter Dillard, was employed by Merchants, Incorporated ("Merchants"), as the store manager of Merchants store in Greensboro, North Carolina. As part of his employment Dillard was required to fill multiple roles for Merchants and to work long hours in order to keep the store at peak performance levels. Plaintiff testified that

Dillard had been required to work in this manner since transferring to the store in Greensboro sometime in1993 or 1994. On 4 April 1996, Dillard died of a heart attack; he was 50 years of age.

Plaintiff filed an I.C. Form 18 on 31 March 1997. Plaintiff alleged that overwork, overexertion and extreme stress caused Dillard to suffer a heart attack that resulted in his death. The case was heard by a deputy commissioner on 28 April and 8 May 1998. The deputy commissioner filed an opinion and award on 1 July 1999 awarding plaintiff death benefits. Defendants appealed to the full Commission. On 23 March 2000, the full Commission concluded that Dillard's heart attack resulted from a compensable injury by accident arising out of and in the course of his employment and awarded death benefits. Defendants appealed to this Court and on 2 October 2001, this Court remanded the case to the Industrial Commission for further review in light of the Court's decision in *Lovekin v. Lovekin & Ingle*, 140 N.C. App. 244, 535 S.E.2d 610, *disc. review denied*, 353 N.C. 266, 546 S.E.2d 105 (2000). On 19 September 2002, the full Commission denied plaintiff's claim. Plaintiff appeals.

Plaintiff contends that the extension of the store's hours by two hours, consequently extending Dillard's work hours by about an hour, in addition to all of the other stressful events encountered by Dillard on the job triggered his heart attack. She then asserts that the heart attack was therefore an "injury by accident" within the meaning of the North Carolina Workers' Compensation Act.

Under the North Carolina Workers' Compensation Act, an injury arising out of and in the course of employment is compensable only if it is caused by an "accident." N.C. Gen. Stat. §97-2(6) (2003). An accident is "an unlooked for and untoward event which is not expected or designed by the person who suffers the injury." *Adams v. Burlington Industries*, 61 N.C. App.

258, 260, 300 S.E.2d 455, 456 (1983) (citations omitted). An accident therefore involves “the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences.” *Id.*

Plaintiff argues in her brief that the change in the store hours, which consequently changed the number of hours that Dillard worked, was an accident. We cannot agree. The lengthening of an employee’s day by one hour is not “an unlooked for and untoward event.” Dillard did not suffer from an “accident” as defined in the North Carolina Workers’ Compensation Act as a result of the extension of his working hours. Accordingly, plaintiff is not entitled to benefits under the Act.

Likewise, plaintiff is not entitled to benefits based on Dillard’s long history of work related stress. In *Lovekin*, this Court found that an accident must result from an event. *Lovekin* at 248, 535 S.E.2d at 613. Multiple events, or stressors, occurring over a period of time, allegedly resulting in an acute cardiac incident, did not constitute an “accident.” *Id*. Much of plaintiff’s evidence addressed multiple events that caused stress in Dillard’s life since moving to Greensboro, a period of at least two years. As previously stated, plaintiff has not shown an event that constitutes an “accident” that resulted in Dillard’s death. The Industrial Commission appropriately concluded that this case was controlled by the principles stated in *Lovekin*. Plaintiff’s assignment of error fails.

Plaintiff also argues that finding of fact #6 is not supported by competent evidence. The Commission found in part:

> The store hours of the deceased’s location were extended two days before his death, although the deceased routinely worked beyond the new closing time before the change in store hours.

Plaintiff argues that all evidence pointed to the fact that the latest Dillard ever worked before the change in store hours was 8 o'clock, which was not beyond the new closing time. "In reviewing an opinion and award from the Industrial Commission, the appellate courts are bound by the Commission's findings of fact when supported by any competent evidence . . . ." *Lanning v. Fieldcrest-Cannon, Inc.*, 352 N.C. 98, 106, 530 S.E.2d 54, 60 (2000). Plaintiff testified in response to defendants' questions:

> Q: You were asked some questions about whether regular hours were to 7 o'clock or 6:30 or whatever. When your husband worked, did he always get off at the end of the regular hours?
>
> A: No, he always worked, most of the time, several hours after his regular hours, because they were busy and understaffed.
>
> Q: Was it unusual for him to go home at 8 or 9 o'clock at night?
>
> A: No, it wasn't.

Plaintiff's own testimony is competent evidence to support the Commission's finding that Dillard routinely worked beyond the new closing hours. Plaintiff's assignment of error fails.

Plaintiff also argues that finding of fact #9, which found that no unusual events or anything out of the ordinary occurred on the day of Dillard's death, was not supported by competent evidence. However, given that the extension of Dillard's work hours was not an event, there was competent evidence in the record to support finding of fact #9. Plaintiff's assignment of error fails.

Plaintiff argues that finding of fact #10 is an inappropriate finding of fact and not supported by competent evidence. The Industrial Commission found:

> 10. Dr. Mark was of the opinion that the change in store hours did not contribute to the deceased's death.

Plaintiff is correct in arguing that this is not an appropriate finding of fact because it only recites what Dr. Mark's testimony was and not what the Commission found as a result. Mere recitations of testimony are not ultimate facts that support the Commission's conclusions of law. *Williamson v. Williamson*, 140 N.C. App. 362, 364, 536 S.E.2d 337, 339 (2000). However, here the doctor's opinion goes to cause of death and is not necessary to the Commission's finding that there was no "injury by accident." Because the purported finding is not needed to support the opinion and award, plaintiff's assignment of error fails.

Plaintiff's final argument is that the Commission erred in failing to address in the opinion and award her evidence of the racial discrimination that Dillard faced on the job. Plaintiff contends that the racial discrimination faced by Dillard was an "accident" that could support an award of death benefits. After reviewing the entire record, plaintiff has failed to prove an event of racial discrimination that resulted in Dillard's heart attack, but has rather shown multiple incidents of racial discrimination over a period of time. As we said in *Lovekin*, multiple events over a period of time do not constitute an "accident." *Lovekin* at 248, 535 S.E.2d at 613.

The Commission is required to indicate in its findings that it has considered or weighed all testimony with respect to the critical issues, but is not required to make exhaustive findings as to each statement made by any given witness or to make findings rejecting specific evidence. *Bryant v. Weyerhaeuser Co.*, 130 N.C. App. 135, 139, 502 S.E.2d 58, 62 (1998), *disc. review denied*, 349 N.C. 228, 515 S.E.2d 700 (1998). Because the evidence of racial discrimination does not support a finding of an "accident," the Commission adequately fulfilled its duty to address all testimony by stating in the opinion and award that the findings were "based upon all of the competent, credible, and convincing evidence of record." Plaintiff's assignment of error fails.

Affirmed.

Judges MARTIN and LEVINSON concurs.

Report per Rule 30(e).