Affirmed
Chair, Riggsbee
Concurring: Sellers
Dissent: Scott

NO. COA00-879

NORTH CAROLINA COURT OF APPEALS

Filed: 5 June 2001

JAMES SCHENCK,
Employee, Plaintiff

v.

FREIGHTLINER CORPORATION
(Self-Insured),
Employer, Defendant

North Carolina
Industrial Commission
I.C. No. 724651

Appeal by plaintiff from opinion and award entered 5 June 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 May 2001.

Thomas B. Kakassy, P.A., by Thomas B. Kakassy, for plaintiff-appellant.

Mark O. Crowther for defendant-appellee.

TIMMONS-GOODSON, Judge.

Plaintiff was employed by defendant, Freightliner Corporation, as a shearer operator. Plaintiff's job required him to cut truck parts from large pieces of steel using shearing machines. A crane or tow motor was generally used to bring metal stacks to the machine. On Friday, 20 June 1997, plaintiff alleged that he used a screw driver to lift the edge of a sheet of metal from the stack and was attempting to slide the sheet manually onto the table when he felt a sharp pain in his lower back. Plaintiff did not go to the plant nurse or fill out an accident report. Plaintiff testified that he did not think he had hurt himself that seriously,

and that if he went home and put ice on it, he would not have to miss time from work. However, the following morning when plaintiff tried to get out of bed, he found that the pain was a lot worse. Plaintiff claims to have then called his supervisor, James McKee, on Monday morning to report the injury and to advise him that he would be unable to work because of the injury. However, according to McKee, plaintiff told him he was sick and did not mention any back injury.

On 24 June 1997, plaintiff went to the emergency room at Gaston Memorial Hospital complaining of back pain. According to hospital records, plaintiff did not remember any specific injury, although he stated that he thought the pain may have started the previous Friday. Plaintiff was referred to his family physician. On 26 June 1997, plaintiff was examined by Dr. Alan Clark, M.D. Plaintiff told Dr. Clark that he woke up Saturday morning with severe low back pain, that he worked in a metal shop moving heavy objects, and that he felt he had hurt his back at work. Dr. Clark diagnosed plaintiff with a herniated disc. On 5 September 1997, plaintiff underwent a left L5 laminotomy, discectomy and foraminotomy. Plaintiff has not returned to work since 20 June 1997.

On 9 December 1997, plaintiff filed a Form 33 request that his claim be assigned for hearing with the Industrial Commission. On 31 December 1998, Deputy Commissioner Morgan S. Chapman entered an opinion and award finding that "[p]laintiff did not sustain an injury by accident arising out of and in the course of his

employment with defendant-employer or a specific traumatic incident of the work assigned" on 20 June 1997. Accordingly, the deputy commissioner denied plaintiff's claim for workers' compensation benefits. On 5 June 2000, the Full Commission entered an opinion and award affirming the deputy commissioner's decision. Plaintiff appeals.

Plaintiff argues that the Industrial Commission erred in finding as fact and concluding as a matter of law that he did not prove that he sustained an injury by accident arising out of the course of his employment, or a specific traumatic incident on 20 June 1997. Plaintiff contends that his testimony on its face establishes a specific traumatic incident suffered in the course and scope of his employment, and the medical records reaffirm causation. Furthermore, plaintiff asserts that there is no credible evidence to support the Commission's findings.

After careful review of the record, briefs and contentions of the parties, we affirm. The findings of fact made by the Industrial Commission are conclusive on appeal if supported by any competent evidence. *Watkins v. City of Asheville*, 99 N.C. App. 302, 303, 392 S.E.2d 754, 756 (1990). The Court's review is limited to determining "whether there was competent evidence before the Commission to support its findings and . . . whether such findings support its legal conclusions." *McLean v. Roadway Express*, 307 N.C. 99, 102, 296 S.E.2d 456, 458 (1982).

Here, the Industrial Commission concluded that plaintiff did not prove that he sustained a herniated disc on 20 June 1997 in a

work-related injury by accident. The Commission found that plaintiff's explanation of how he was injured was plausible, but not credible. Specifically, the Commission noted that plaintiff did not report a work-related injury to his supervisor on 23 June 1997, and did not describe a specific lifting injury to his initial treating physicians. We find there was competent evidence in the record to support the Commission's findings. First, McKee, plaintiff's supervisor, testified that plaintiff did not report to him that he injured his back, either on 20 June 1997, the day he was allegedly injured, or on 23 or 24 June 1997, when plaintiff called into work sick. In fact, McKee testified that plaintiff did not tell him he hurt his back until 7 July 1997. Second, when plaintiff sought emergency room treatment for his back on 24 June 1997, he told his treating physician that he could not remember any specific injury.

We further note that plaintiff failed to prove his claim because he presented no expert medical evidence on causation. "[E]vidence on causation 'must indicate a reasonable scientific probability that the stated cause produced the stated result.' Evidence is insufficient on causation if it 'raises a mere conjecture, surmise, and speculation.'" *Phillips v. U.S. Air, Inc.*, 120 N.C. App. 538, 542, 463 S.E.2d 259, 262 (1995)(quoting *Hinson v. National Starch & Chem. Corp.*, 99 N.C. App. 198, 202, 392 S.E.2d 657, 659 (1990)), *aff'd per curiam*, 343 N.C. 302, 469 S.E.2d 552 (1996). Here, no medical experts testified as to causation. Instead, plaintiff simply stipulated to the admissibility of his

medical records. This evidence is insufficient to prove causation. Accordingly, the opinion and award of the Industrial Commission is affirmed.

Affirmed.

Judges GREENE and TYSON concur.

Report per Rule 30(e).