

Affirmed
Author: Sellers
Concurring: Mavretic
Riggsbee

NO. COA00-529

NORTH CAROLINA COURT OF APPEALS

Filed: 7 August 2001

ANNA M. TURNER,
Plaintiff

v.

GUILFORD COUNTY PUBLIC DEFENDER,
Self-Insured Employer;
and KEY RISK MANAGEMENT SERVICES, INC.,
Servicing Agent;
Defendants

North Carolina
Industrial Commission
I.C. No. 731727

Appeal by plaintiff from judgment entered 6 March 2000 by the
North Carolina Industrial Commission. Heard in the Court of
Appeals 15 March 2001.

Kathleen G. Sumner for plaintiff-appellant.

*Willardson & Lipscomb, A.P., by D. Sigsbee Miller, for
defendant-appellees.*

TIMMONS-GOODSON, Judge.

Anna M. Turner ("plaintiff") appeals an opinion and award of
the North Carolina Industrial Commission ("the Full Commission")
filed 23 March 2000.

The record reflects that plaintiff suffered a compensable
injury on 13 August 1997 while employed as a legal assistant for
the Guilford County Public Defender ("defendant"). In an opinion
and award filed 31 December 1998, a deputy commissioner of the Full
Commission concluded that plaintiff was entitled to temporary total
disability at the rate of \$267.98 per week for 4 and 1/7 weeks and
that defendant was not required to provide medical treatment after

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OF NORTH CAROLINA

11 September 1997. In its opinion, the Full Commission affirmed the decision of the deputy commissioner.

Plaintiff had been an employee of defendant for about two years as of the date of the work-related injury. On or about 6 July 1997, plaintiff sustained a non-work related fall at home while on vacation. She sought medical attention for the injury and was out of work for five weeks. Plaintiff returned to work on 11 August 1997. She worked a partial day on 11 August 1997, a full day on 12 August 1997, and then, on 13 August 1997, she sustained an injury while at work when her feet became entangled in the rollers of her chair while trying to stand.

Plaintiff was taken to the hospital and, the following day, had an office visit with Dr. Angela Waterman ("Dr. Waterman"). Plaintiff has not returned to work since 13 August 1997. On 11 September 1997, however, Dr. Waterman noted during an office visit with plaintiff that the injury sustained on 11 August 1997 had resolved.

The Full Commission made findings of fact consistent with the facts set out, including the following pertinent findings of fact:

1. Plaintiff, who is fifty-two years old, began working for defendant in June 1995 as a legal secretary for the public defender's office. Her job duties included typing legal documents, filing and mailing documents, and providing clerical support to the attorneys and the investigator in the office. Her annual salary at the time in question was \$21,017.28, which generated an average weekly wage of \$401.97.

2. For approximately ten years before her employment with defendant, plaintiff had been treated for rheumatoid arthritis. She had

taken Prednisone, an oral steroid medication, on a number of occasions to treat flare-ups of her arthritis. Consequently, she was more susceptible to injury.

3. In early July 1997, she developed knee, ankle, thigh, and low back pain which her physician, Dr. Angela Waterman, thought was due to a flare-up of her rheumatoid arthritis. Consequently, Dr. Waterman prescribed a course of Prednisone. Her symptoms improved except for the back, hip, and thigh pain. An MRI was ordered which revealed a slightly impacted fracture of her sacrum. The source of the fracture was not clear but plaintiff attributed it to a fall she sustained while moving furniture earlier that month when she lost her balance and "sat down hard" backwards from a position of approximately 14 inches from the floor.

4. Dr. Waterman advised plaintiff that the treatment for her sacral fracture was pain medication, rest and partial weight bearing for several months, and indicated that it may take six to nine months for the symptoms to resolve. The pain was sufficiently severe that plaintiff used a cane to walk. Dr. Waterman recommended that she use a walker.

6. On August 1, 1997 when plaintiff saw Dr. Waterman she stated that . . . she was still experiencing a great deal of low back pain and that she had recently gone to the emergency room for treatment. . . .

7. Plaintiff returned to work on August 11, 1997. She left work early due to pain both that day and the next. . . .

8. On August 13, 1997, plaintiff reported for work with her cane and walker. She worked at her computer that morning. At approximately 11:00 she began to get up from her chair and, in the process, fell to the floor for unclear reasons. . . . An ambulance was then summoned and plaintiff was taken to the hospital. At the emergency room, she was diagnosed with a left hip contusion.

9. Plaintiff then saw a family nurse practitioner at Dr. Waterman's office on

August 14, 1997 and again on August 22, 1997 while Dr. Waterman was out of town. . . . It was September 11, 1997 before Dr. Waterman examined her. At that time the doctor was of the opinion that the contusions from her August 13, 1997 fall had resolved but that she was continuing to suffer from the sacral insufficiency fracture which was slowly resolving.

13. . . . [T]he greater weight of the evidence establishes that plaintiff fell and bruised her hip at work on August 13, 1997. She thereby sustained an injury by accident arising out of and in the course of her employment with defendant. However, the injuries she sustained that day resolved by September 11, 1997 when Dr. Waterman saw her.

15. As a result of plaintiff's August 13, 1997 injury by accident, she was unable to work from August 14, 1997 through September 11, 1997. She reached maximum medical improvement by September 11, 1997 with no permanent partial disability.

Based upon the findings of fact, the Full Commission concluded as a matter of law, the following:

1. On August 13, 1997, plaintiff sustained an injury by accident arising out of and in the course of her employment with defendant. G.S. § 97-2(6).
 2. Plaintiff is entitled to compensation for temporary total disability at the rate of \$267.98 per week for 4 and 1/7 weeks as a result of her injury by accident of August 13, 1997. G.S. § 97-29.
 3. Plaintiff is entitled to have defendant provide all reasonably necessary medical compensation arising from this injury by accident so long as it tends to effect a cure, provide relief, or lessen the period of disability. However, she is not entitled to have defendant provide medical treatment after September 11, 1997 in that the subsequent treatment does not relate to this injury. G.S. § 97-2(19) and G.S. § 97-25.
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The issue presented on appeal is whether the Full Commission's findings of fact are supported by competent evidence in the record. Because we find that the findings of fact are supported by competent record evidence, and these findings support the conclusions of law, the opinion and award of the Full Commission is affirmed.

Plaintiff asserts that the Full Commission erred in placing the burden on plaintiff to prove continuing disability. Thus, plaintiff contends that several of the Commission's findings of fact are not supported by the evidence and therefore, the conclusion of law regarding temporary disability and the compensation award are flawed. We disagree.

It is well settled that on an appeal from the Industrial Commission, this Court's review is limited to "whether the Commission's findings of fact are supported by competent evidence and whether the Commission's conclusions of law are justified by its findings of fact." *In re Stone v. G & G Builders*, 346 N.C. 154, 157, 484 S.E.2d 365, 367 (1997) (quoting *Hendrix v. Linn-Corriher Corp.*, 317 N.C. 179, 186, 345 S.E.2d 374, 379 (1986)). As the fact finding body, the "Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)). The Commission's findings of fact are conclusive on appeal if they are supported by any competent evidence. *Gallimore v. Marilyn's Shoes*, 292 N.C.

399, 233 S.E.2d 529 (1977). Accordingly, this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274.

Disability is defined as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." N.C.G.S. § 97-2(9) (1999). The Full Commission must find the following three facts in order to find a person disabled under the Workers' Compensation Act:

(1) that plaintiff was incapable after her injury of earning the same wages she earned before her injury in the same employment, (2) that she was incapable after her injury of earning the same wages she earned before her injury in any other employment, and (3) that her incapacity to earn was caused by her injury.

Hoyle v. Carolina Associated Mills, 122 N.C. App. 462, 464, 470 S.E.2d 357, 358 (1996).

In the case at bar, the Full Commission found all three facts to be true and thus awarded compensation to the plaintiff. The Full Commission terminated compensation, however, as of 11 September 1997, the date that Dr. Waterman stated that the at-work injury had resolved.

Plaintiff argues that while an injured employee maintains the initial burden of proving the existence and extent of disability, *Smith v. Sealed Air Corp.*, 127 N.C. App. 359, 489 S.E.2d 445 (1997), once disability is established, the employee is then "cloaked in the presumption of disability, and the burden [is] on

the employer to rebut that presumption." *Saums v. Raleigh Community Hospital*, 346 N.C. 760, 764, 487 S.E.2d 746, 750 (1997). Plaintiff argues that there was no medical or other evidence submitted by defendant to rebut plaintiff's position that she is entitled to continuing disability benefits. Defendant presented evidence to the Full Commission, however, in the form of medical records to which both sides stipulated. In those records, Dr. Waterman concluded that the injuries that arose in the course of plaintiff's employment had resolved by 11 September 1997. The Full Commission did not place the burden on plaintiff to prove continuing disability. Rather, defendant met its burden of rebutting the presumption of continuing disability by entering Dr. Waterman's notes into evidence.

The Full Commission found as a fact that plaintiff's "contusions from her August 13, 1997 fall had resolved" by 11 September 1997. Based on this finding of fact, the Full Commission concluded as a matter of law that plaintiff is "not entitled to have defendant provide medical treatment after September 11, 1997 in that the subsequent treatment does not relate to this injury." The conclusion of law was supported by findings of facts that were based on competent evidence. See e.g. *In re Stone*. Consequently, plaintiff's assignment of error is overruled.

Plaintiff argues that defendant became fully disabled as of her 13 August 1997 at-work fall and that she is entitled to compensation for all expenses since that date. Plaintiff argues that even where there is a pre-existing condition, as here, if an

at-work injury aggravates it, the relative contributions are not weighed. *McKenzie v. McCarter Electrical Co.*, 86 N.C. App. 619, 359 S.E.2d 249 (1987). Apportionment is not proper where the evidence before the commission renders an attempt at apportionment between work-related and non-work-related causes speculative. *Harrell v. Harriet & Henderson Yarns*, 314 N.C. 566, 336 S.E.2d 47 (1985). While apportionment is not appropriate when it requires speculation, in the case at bar, medical records were presented that made a clear, non-speculative, distinction between the injuries plaintiff sustained at home and those sustained during the course of her employment. The Full Commission was acting within its statutory authority to weigh this evidence and draw a reasoned conclusion of law based on its competent findings of fact. *Saums*, 346 N.C. 760, 487 S.E.2d 746.

We hold that the Full Commission's conclusions of law are justified by findings of fact which are supported by competent evidence. The judgment of the Full Commission is affirmed.

Affirmed.

Judges MARTIN and TYSON concur.

Report per Rule 30(e).