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NO. COA03-42

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2004

GLENN WILLIAMSON,
Employee-Plaintiff

v.

North Carolina Industrial Commission
I.C. File Nos. 740372, 947099, & 975034

SHOE SHOW, INC.,
Employer-Defendant

and

FIREMAN'S FUND INSURANCE
COMPANY,
Carrier-Defendant

Appeal by plaintiff from an opinion and award entered 30 August 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 November 2003.

DeVore Acton & Stafford, P.A., by William D. Acton, Jr., for plaintiff-appellant.

Morris York Williams Surles & Barringer, L.L.P., by John F. Morris and Kim E. Taylor, for defendants-appellees.

CALABRIA, Judge.

Glenn Williamson ("plaintiff") appeals an opinion and award issued by the North Carolina Industrial Commission ("Commission") denying plaintiff workers' compensation benefits for injuries sustained on 14 June 1999 and 21 October 1999. We affirm.

On 18 August 1997, plaintiff suffered a back strain while working for Shoe Show, Inc. ("employer"), and defendants accepted plaintiff's claim as compensable. On 14 June 1999,

plaintiff fractured his left ankle while exiting a cafeteria. On 21 October 1999, plaintiff's automobile crossed into the lane designated for on-coming traffic and collided with another vehicle, resulting in a broken right ankle. In both instances, plaintiff asserted his ankle injuries were precipitated by continuing symptoms of his original back injury and, therefore, should be compensable. Defendants denied both claims.

The matter was set for hearing and, on 15 February 2001, Deputy Commissioner Pamela T. Young issued an opinion and award denying plaintiff's claims for additional compensation for the ankle injuries and finding that such injuries were not caused by or related to his compensable injury of 18 August 1997. This opinion and award was substantially adopted by the Commission's opinion and award filed 30 August 2002. Plaintiff appeals.

Our review of a decision of the Commission is "limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). In undertaking this review, this Court "'does not have the right to weigh the evidence and decide the issue on the basis of its weight.'" *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)). "The evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Id.*

The Commission is the "sole judge of the weight and credibility of the evidence." *Deese*, 352 N.C. at 116, 530 S.E.2d at 553. Moreover,

the Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible. [Requiring and reviewing such explanation] would be inconsistent with our legal system's tradition of not requiring the

fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.

Id., 352 N.C. at 116-17, 530 S.E.2d at 553.

In the instant case, the evidence before the Commission included plaintiff's testimony of the events leading up to and causing the ankle injuries as well as a number of medical depositions, including, *inter alia*, those from Dr. Chaconas, a neurologist who was plaintiff's treating physician for his 18 August 1997 back injury; Dr. Griffin, an orthopedic surgeon who treated plaintiff's ankle injuries; Dr. Carlton, who treated plaintiff for pain management; Dr. Brigham, an orthopedic surgeon who examined plaintiff; Dr. Demas, a neurologist who examined plaintiff; and Dr. Aronoff, a pain management doctor who examined plaintiff.

The Commission noted that certain portions of the testimony received from the orthopedists, Drs. Griffin and Brigham, conflicted with testimony received from the neurologists, Drs. Chaconas and Demas. Specifically, the conflict in testimony concerned whether there was a causal relationship between plaintiff's original compensable injury by accident and his subsequent ankle injuries. The Commission accorded greater weight to the opinions of Drs. Griffin and Brigham concerning the cause of plaintiff's ankle fractures. Based on these findings, the Commission concluded as a matter of law that plaintiff's ankle injuries were neither caused by nor resulted from his compensable back injury.

Plaintiff asserts the Commission committed reversible error by relying upon an implied negative opinion from Dr. Griffin in weighing the evidence before it. Plaintiff's assertion is premised on Dr. Griffin's refusal to answer hypothetical deposition questions concerning whether back spasms could have precipitated the incidents in which plaintiff injured his ankles. Plaintiff states since "Dr. Griffin refused to respond to [the] hypothetical question regarding the

relationship of plaintiff's back spasms and his fall, there is no evidence of record of Dr. Griffin's opinion on the causation issue." Plaintiff argues that the Commission could not properly weigh the evidence if it included the implied opinion of Dr. Griffin in the balance. We disagree because, again, the issue before us is whether there is any competent evidence of record regarding the causation issue.

The Commission's conclusions of law that plaintiff's ankle fractures were not caused by and did not result from his back injury expressly rest upon the medical opinions of Drs. Griffin and Brigham. Plaintiff presents no argument attacking the admissibility or foundation for Dr. Brigham's testimony; accordingly, we accept that testimony as competent. This testimony, independent of Dr. Griffin's testimony, fully supports the Commission's findings of fact and conclusions of law regarding plaintiff's entitlement to workers' compensation benefits for his ankle injuries.

Plaintiff asks this Court to require the Commission to excise Dr. Griffin's testimony concerning causation and force the Commission to reweigh the evidence as to this issue. This we decline to do. Our duty here does not go beyond determining whether there is any competent evidence in the record to support the Commission's findings of fact. *Deese*, 352 N.C. at 116, 530 S.E.2d at 553. The challenged findings are based on competent evidence, and those findings support the Commission's conclusions of law. Accordingly, we uphold the Commission's determination. The remainder of plaintiff's assignments of error are not addressed in his arguments to this Court and, therefore, are deemed abandoned. N.C.R. App. P. 28(b)(6) (2004).

Affirmed.

Judges McGEE and HUDSON concur.

Report per Rule 30(e).