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NO. COA01-263

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

FRANK S. EASTON,
Employee,
Plaintiff-Appellee,

v.

North Carolina Industrial Commission
I.C. File No. 743687

J.D. DENSON MOWING COMPANY,
Employer-Appellant,

and

GREAT AMERICAN INSURANCE COMPANY,
Carrier-Appellant,
Defendants.

Appeal by defendants from Opinion and Award of the North Carolina Industrial Commission entered 13 October 2000. Heard in the Court of Appeals 9 January 2002.

Scudder & Hedrick, by Samuel A. Scudder, for the plaintiff- appellee.

Teague, Campbell, Dennis & Gorham, L.L.P., by Bruce A. Hamilton and Melissa R. Garrell, for the defendants- appellants.

WYNN, Judge.

This appeal by J.D. Denson Mowing Company and its workers compensation insurance carrier, Great American Insurance Company, arises from an Industrial Commission award in favor of Frank S. Easton. The Commission found that Easton fell off a tractor while working for J.D. Denson Mowing Company and suffered injury, and that:

15. On 6 September 199[7], three days after the accident, plaintiff was seen at Wake Medical Center with complaints of neck and chest wall pain and bilateral tingling in his hands. A CT examination and x-rays were done and the physician diagnosed a fracture of the spinous process at C-7.

16. Plaintiff had follow-up treatment at UNC Hospital. He has been treated by Joe Minchew, M.D., an orthopaedic surgeon, and by two neurologists, Alan Finkel, M.D., and Albert Hinn, M.D. Dr. Minchew referred plaintiff to Dr. Hinn after the results of an MRI scan of his neck were abnormal. Dr. Hinn began treating plaintiff on 6 February 1998. Plaintiff complained of pain in his neck, tingling and numbness in his extremities, cold feet, diminished control of his fingers, and weak legs.

17. Dr. Hinn diagnosed plaintiff with neuropathy, a disease of the nerves, and with [] myelopathy, a disease of the spinal cord. Plaintiff's neuropathy was a pre-existing alcohol-related condition which was not cause by his fall but was probably aggravated by the fall and the resulting myelopathy. Plaintiff's fractured vertebrae, spinal cord lesion, and myelopathy were caused by the 3 September 1997 injury by accident.

...

19. At the time of the hearing before the deputy commissioner, plaintiff suffered from numerous medical conditions, including a fracture of his spinous process, an abnormal lesion of the cervical spinal cord, an unsteady gait, depression, and a combination of neuropathy and myelopathy. Plaintiff had not reached maximum medical improvement and has not been released to return to any type of work.

20. Due to injury by accident, plaintiff was unable to work in any employment from 3 September 1997 and continuing.

The Commission concluded:

1. On 3 September 1997, plaintiff sustained an injury by accident arising out of and in the course of his employment with defendant- employer

Accordingly, the Commission awarded plaintiff disability benefits and medical expenses compensation. Defendants appeal arguing that no competent evidence supports the

Commission's finding of fact 17 that Easton's neuropathy "was probably aggravated by the fall" on 3 September 1997; and that therefore, that finding cannot support the Commission's conclusion that Easton's injury arose out of his course of employment. We disagree.

Generally, from an appeal from an opinion and award of the Commission, we address two questions: (1) Whether there is any competent evidence to support the Commission's findings of fact; and (2) Whether the Commission's findings of fact support its conclusions of law. *See Lowe v. BE&K Construction Co.*, 121 N.C. App. 570, 573, 468 S.E.2d 396, 397 (1996). The Commission is the fact finding body, *id.*, and its findings, if supported by any competent evidence, are conclusive on appeal even where the evidence may support a contrary finding. *See Bailey v. Sears Roebuck & Co.*, 131 N.C. App. 649, 652-53, 508 S.E.2d 831, 834 (1998). "[T]he Commission is the sole judge of the credibility of the witnesses as well as how much weight their testimony should be given." *Id.* at 653, 508 S.E.2d at 834.

Where expert medical testimony is required to establish causation, "the expert testimony need not show that the work incident caused the injury to a 'reasonable degree of medical certainty.'" *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 599, 532 S.E.2d 207, 211 (2000) (quoting *Cooke v. P.H.Glatfelter/Ecusta*, 130 N.C. App. 220, 224, 502 S.E.2d 419, 422 (1998)). Rather, there must be some competent evidence "that the accident at least *might* have or *could* have produced the particular disability in question." *Click v. Freight Carriers*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980) (emphasis added).

The Commission found as fact that Easton's fractured vertebrae, spinal cord lesion, and myelopathy were caused by the 3 September 1997 accident, and that Easton's neuropathy, although preexisting, was "probably" aggravated by the fall and resulting myelopathy. Dr. Hinn testified in his deposition on 19 November 1998 that it was his presumption that Easton's fall on

3 September 1997 was the cause of Easton's fractured vertebrae. Dr. Hinn further testified that Easton's fall from the tractor was the "best explanation" for his spinal cord lesion, and that it was "quite possible" that Easton sustained a myelopathy as a result of the fall. Dr. Hinn also testified that he considered it "a distinct possibility and perhaps quite likely" that Easton's myelopathy was a source of his symptomology after the fall. According to Dr. Hinn, it was a "distinct possibility" that Easton's spinal cord injury caused a myelopathy that increased the amount of Easton's disability or symptomology, or increased his likelihood of problems.

We conclude that competent evidence in the record supports the Commission's finding of fact 17. Defendants do not challenge the remaining findings of fact; nonetheless, we conclude that those findings of fact are likewise supported by competent evidence in the record. Furthermore, we conclude that the Commission's findings support its conclusions of law. Accordingly, the Commission's 13 October 2000 opinion and award is,

Affirmed.

Judges TIMMONS-GOODSON and THOMAS concur.

Report per Rule 30(e).