

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA 03-294

NORTH CAROLINA COURT OF APPEALS

Filed: 15 June 2004

LEWIS FRAZELLE,
Employee,
Plaintiff;

v.

North Carolina Industrial Commission
I.C. File Nos. 801638 & 824147

MAOLA MILK COMPANY,
Employer;

and

CNA INSURANCE COMPANIES,
Carrier;
Defendants.

Appeal by plaintiff from Opinion and Award entered 15 November 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 4 December 2003.

Brumbaugh, Mu & King, P.A., by Leah L. King, for plaintiff-appellant.

Hedrick & Morton, L.L.P., by G. Grady Richardson, Jr., for defendant-appellees.

HUDSON, Judge.

Plaintiff appeals an Opinion and Award entered 15 November 2002 by the North Carolina Industrial Commission denying plaintiff's claim for workers' compensation benefits. We affirm.

A factual summary follows, based on the findings and conclusions of the Commission, which have not been challenged on appeal. On 17 November 1997, plaintiff sustained an

admittedly compensable injury by accident while working for defendant/employer when a barrel fell knocking him to the ground. As a result of the fall, plaintiff sought treatment from various medical providers over the ensuing several months for injuries to his back.

On 5 February 1998, plaintiff again returned to his treating orthopedist, Dr. Terry Kay. Dr. Kay released plaintiff to return to work with sedentary duties and a five pound lifting restriction, and referred plaintiff to a physiatrist, Dr. Christopher Delaney.

On 26 February, Dr. Delaney examined plaintiff for a second opinion. He found no objective evidence of any significant musculoskeletal or neurologic injury, and noted that inconsistencies in plaintiff's examination suggested symptom magnification. Plaintiff then returned to Dr. Kay on 5 March to discuss Dr. Delaney's findings. At that time, Dr. Kay released plaintiff to return to work at full duty effective the following day.

Defendants filed a form 60 dated 8 January 1998 admitting plaintiff's right to compensation for disability beginning 5 January 1998, resulting from the November injury. Defendants paid compensation at the rate of \$220.42 per week, until plaintiff returned to work at his regular job on 6 March 1998.

Within an hour or two of starting work, plaintiff alleged that he sustained another injury when he fell while pushing a cart loaded with ice cream. Plaintiff returned to Dr. Delaney on 9 March 1998 with complaints of back pain from his alleged injury three days earlier. Dr. Delaney determined that plaintiff either had a severe psychiatric problem or was malingering, and released him to return to work without restriction.

Plaintiff failed to return to work as directed by Dr. Delaney. David Briley, a representative of the employer, contacted plaintiff and informed him that he should return to

work on 10 March as instructed by his doctor. Plaintiff never reported to work, and was subsequently terminated.

Between 19 March 1998 and the date of the hearing in 2001, plaintiff sought additional medical opinions and treatment from various providers, none of whom were able to identify the source of plaintiff's complaints.

Plaintiff testified at the hearing that he had a history of depression, including a failed suicide attempt in October 1997. Plaintiff attributed his depression to his brother's death and his perceived failure to "be there for him." The Commission specifically found as fact that "no doctor or psychiatrist has related Plaintiff's depression to any work related injury." As a result of its findings, the Commission concluded that plaintiff failed to prove either (1) that he sustained a new compensable injury on 6 March 1998, or (2) that he sustained a change of condition or exacerbation of a pre-existing condition related to the November injury. Based upon these findings and conclusions, the Commission denied plaintiff's claims for additional benefits.

Argument

Plaintiff argues first that the Commission erred by failing to make specific findings of fact regarding the extent to which plaintiff's depression was worsened by his compensable work related injury. We disagree.

On appeal of a workers' compensation decision, we are "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 making its determinations, the Commission "is not required . . . to find facts as to all credible evidence. That requirement would place an unreasonable burden on the Commission.

Instead the Commission must find those facts which are necessary to support its conclusions of law.” *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 602, 532 S.E.2d 207, 213 (2000); *see* N.C. Gen. Stat. § 97-86 (2001). Moreover, the Commission must “make specific findings with respect to crucial facts upon which the question of plaintiff’s right to compensation depends.” *Gaines v. Swain & Son, Inc.*, 33 N.C. App. 575, 579, 235 S.E.2d 856, 859 (1977).

Here, the Commission found the following regarding plaintiff’s depression:

32. Plaintiff has a history of depression that pre-dates his injury. This history includes a failed suicide attempt in October 1997 when Plaintiff shot himself in the head with a handgun.

33. . . . Other than reporting plaintiff’s history, the psychiatric records do not provide a medical opinion concerning the cause of plaintiff’s depression or whether it was augmented by plaintiff’s injuries at work. Therefore, based on the greater weight of the competent evidence, the Full Commission finds that plaintiff had preexisting depression which caused him to overstate his workplace injuries. The competent evidence does not establish that plaintiff has depression or other mental illness because of his injuries at work.

Although most of this “finding” is merely a recitation of the testimony, it is clear from the quoted portion that the Commission considered evidence of plaintiff’s depression and found that it did not worsen as a result of his injury. Thus, we overrule this assignment of error.

Plaintiff next argues that the Commission’s “findings of fact and conclusions of law go against the greater weight of the competent evidence of record or reasonable inference therefrom.” Plaintiff again contends that the Commission failed to consider evidence of his depression. Again, we disagree.

An appellate court reviewing a workers’ compensation claim “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.” *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)), *reh’g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). In reviewing the evidence, we are required, in accordance with the Supreme Court’s mandate of liberal construction in favor of awarding benefits, to take the evidence “in the light most favorable to plaintiff.” *Id.*

The Full 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. Furthermore,

the Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible. Requiring the Commission to explain its credibility determinations and allowing the Court of Appeals to review the Commission’s explanation of those credibility determinations 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. at 116-17, 530 S.E.2d at 553.

As noted above, the Commission made extensive findings about plaintiff’s depression and any impact his work-related injury may have had upon this pre-existing condition. As this Court does not have the authority to re-weigh the evidence or make credibility determinations, we decline to do so. Thus, we overrule this assignment of error.

Affirmed.

Judges TYSON and STEELMAN concur.

Report per Rule 30(e).