

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-721

NORTH CAROLINA COURT OF APPEALS

Filed: 1 March 2011

CAROLA RENEE LEWIS,
Employee-Plaintiff,

v.

N.C. Industrial Commission
I.C. No. 811680

NEW HANOVER COUNTY SCHOOLS,
Employer-Defendant,
Self-Insured (KEY RISK
MANAGEMENT, Third-Party
Administrator).

Appeal by plaintiff from Opinion and Award entered 11 March 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 21 February 2011.

Brumbaugh, Mu & King, P.A., by Nicole D. Hart, for plaintiff-appellant.

Attorney General Roy Cooper, by Assistant Attorney General Jennifer M. Jones, for defendant-appellee.

ERVIN, Judge.

Plaintiff Carola Renee Lewis appeals from an Opinion and Award entered by Commissioner Staci T. Meyer, with the concurrence of Chair Pamela T. Young and Commissioner Dianne C. Sellers, on behalf of the Industrial Commission denying Plaintiff's claim for workers' compensation benefits due to her failure to prove that she had experienced a work-related injury by accident or specific traumatic incident. On appeal, Plaintiff contends that the Commission erred

by failing to make adequate factual findings, by making factual findings that lack the requisite evidentiary support, and by reaching a legal conclusion that its findings of fact did not support. After careful consideration of Plaintiff's challenges to the Commission's decision in light of the record and the applicable law, we conclude that the Commission's decision should be affirmed.

I. Factual Background

A. Substantive Facts

Plaintiff was initially employed with New Hanover County Schools in 2005 as a substitute bus driver. In 2007, Plaintiff began to receive treatment for pain in her left forearm, hand and neck that did not stem from any employment-related condition. On 10 September 2007, Plaintiff underwent an anterior cervical fusion, which alleviated her pain. On 2 October 2007, Plaintiff's treating physician, Dr. George Huffmon, released her to return to her employment subject to restrictions, so Plaintiff came back to work in the capacity of a bus monitor.

Plaintiff testified that, on 18 October 2007, she was assigned to work as a monitor on Bus 383. On that date, Plaintiff was assisting a student who suffered from polio and had a broken leg. As the student was exiting the bus with Plaintiff's assistance, he began to fall. Although Plaintiff testified that she reached out in an attempt to break the student's fall, she could not support the student's weight, so he fell to the floor. Plaintiff claimed that the weight of the student caused her pain in her arms and the left side of her neck. Plaintiff reported her injury to the

dispatcher that day, and spoke with a supervisor regarding the incident on 22 October 2007.

Arnold Dixon was the driver of Bus 383 on the day that Plaintiff claimed to have been injured. Mr. Dixon testified that 18 October 2007 was the only occasion on which Plaintiff had ever monitored a bus that he was driving. Mr. Dixon denied having any knowledge that the student who allegedly fell suffered from polio and did not recall the student having a broken leg, since he was not wearing a cast. Mr. Dixon testified that the student did not fall on the bus on 18 October 2007 because he would have made sure that the incident was noted on the daily incident sheet had such an event occurred. The daily incident sheet for Bus 383 relating to 18 October 2007 did not reflect that a student had fallen or that Plaintiff had been injured.

On 22 October 2007, Plaintiff went to the Emergency Department at the New Hanover Regional Medical Center and stated that she had suffered from a headache for the past day and had numbness in her left arm, pain in her left forearm, and stiffness in her neck. Plaintiff did not claim to have been injured at work and left the Emergency Department without having been seen by a physician. Plaintiff returned to the Emergency Department on 24 October 2007 and reported that she was experiencing pain in her neck and left forearm. Once again, Plaintiff did not mention having sustained a recent work-related injury.

On the following day, Plaintiff saw Dr. Huffmon and reported that her pain had increased because she had reached to pick up a

child who had fallen on the bus. Dr. Huffmon restricted Plaintiff from riding on the school bus. Plaintiff returned to Dr. Huffmon on 4 December 2007, complaining of continued headaches and neck pain. Subsequent X-rays of Plaintiff's spine revealed a solid fusion of the C5 through C7 vertebrae. An MRI examination of Plaintiff was unremarkable and showed no residual or recurrent disc herniation. Plaintiff returned to Dr. Huffmon on 20 December 2007, complaining of pain in her neck and right forearm. At that point, Dr. Huffmon referred Plaintiff to a pain clinic.

Plaintiff saw Dr. Frank Crawl at Atlantic Pain Management on 31 December 2007. At that time, Plaintiff informed Dr. Crawl that she injured her neck between 27 July and 5 August 2007. Dr. Crawl wrote to Dr. Huffmon on 10 January 2008 concerning his consultation with Plaintiff. Although Dr. Crawl's letter details Plaintiff's history, it does not indicate that Plaintiff was injured while attempting to assist a student on 18 October 2007. According to Dr. Crawl, Plaintiff's pain did not seem to be incapacitating, so he recommended that she receive physical therapy. After seeing Plaintiff for a follow-up visit on 15 January 2008, Dr. Crawl expressed uncertainty as to the reason that Plaintiff was not working, since her injury did not appear to be debilitating. Once again, Dr. Crawl recommended that Plaintiff undergo physical therapy.

B. Procedural History

On 26 October 2007, Plaintiff filed a Form 18, "Notice of Accident to Employer and Claim of Employee," in which she claimed

to have been injured on 18 October 2007 when a student fell on top of her. On 31 January 2008, Defendant filed a Form 61, "Denial of Workers' Compensation Claim," in which it argued, among other things, that Plaintiff's injury did not result from a work-related accident or a specific traumatic incident. After Plaintiff filed a request that her claim be assigned for hearing on 5 February 2008, her claim was heard before Deputy Commissioner Ronnie E. Rowell on 20 August 2008. By means of an Opinion and Award filed 31 July 2009, Deputy Commissioner Rowell concluded that Plaintiff had sustained a compensable injury by accident arising out of and in the course of her employment on 18 October 2007 and awarded workers' compensation benefits to her. Defendant noted an appeal from Deputy Commissioner Rowell to the Commission.

The Commission heard Defendant's appeal on 15 January 2010. By means of an Opinion and Award filed on 11 March 2010, the Commission reversed Deputy Commissioner Rowell's decision and denied Plaintiff's claim for workers' compensation benefits. In its decision, the Commission concluded that Plaintiff had failed to prove that she had sustained a compensable injury by accident or experienced a specific traumatic incident arising out of and in the course and scope of her employment. Plaintiff noted an appeal to this Court from the Commission's decision.

II. Legal Analysis

A. Findings Concerning Witness Credibility

In her initial challenge to the Commission's decision, Plaintiff argues that the Commission erred by determining that she

did not suffer an injury by accident or experience a specific traumatic incident arising out of and in the course of her employment with Defendant on 18 October 2007 on the grounds that the Commission failed to make specific findings of fact addressing witness credibility issues. We are not persuaded by Plaintiff's argument.

It is well established that the Commission serves as the ultimate fact-finding body in workers' compensation cases. "The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965). "The Commission chooses what findings to make based on its consideration of the evidence[, and] [t]his [C]ourt is not at liberty to supplement the Commission's findings[.]" *Bailey v. Sears Roebuck & Co.*, 131 N.C. App. 649, 653, 508 S.E.2d 831, 834 (1998).

[T]he 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.

Deese v. Champion Int'l Corp., 352 N.C. 109, 116-17, 530 S.E.2d 549, 553 (2000); *see also Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998) (holding that, as the ultimate fact-finder, the Commission is responsible for resolving witness

credibility issues and is not required to state any reason for rejecting a deputy commissioner's credibility determination). As a result, despite Plaintiff's contention to the contrary, the Commission did not err by failing to make factual findings addressing the credibility of the various witnesses that presented testimony in this case.

B. Evidentiary Support for the Commission's Factual Findings

Secondly, Plaintiff argues that the Commission's findings of fact and conclusions of law lack the necessary evidentiary support and that the Commission's findings of fact do not support its ultimate conclusion. Once again, we are unable to agree with Plaintiff's argument.

Appellate review of a Commission decision in a workers' compensation proceeding 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*, 352 N.C. at 116, 530 S.E.2d at 553. In challenging the Commission's order, Plaintiff simply argues that the Commission's factual findings lack adequate evidentiary support without disputing the sufficiency of the evidence to support any particular finding of fact. As a result of Plaintiff's failure to challenge the sufficiency of the evidence to any specific factual finding, the Commission's findings of fact are presumed to have the necessary evidentiary support and are binding for purposes of appellate review. *Estate of Gainey v. Southern Flooring & Acoustical Co.*, 184 N.C. App. 497, 501, 646 S.E.2d 604, 607 (2007)

(citation omitted); see also *Wooten v. Newcon Transp., Inc.*, 178 N.C. App. 698, 701, 632 S.E.2d 525, 528 (2006) (treating “unchallenged findings of fact as conclusive on appeal”) (citing *First Union Nat’l Bank v. Bob Dunn Ford, Inc.*, 118 N.C. App. 444, 446, 455 S.E.2d 453, 454 (1995)), *disc. review denied*, 361 N.C. 704, 655 S.E.2d 405 (2007). Furthermore, a careful examination of the Commission’s order compels the conclusion that the Commission’s findings of fact support its conclusion that Plaintiff failed to prove she sustained a compensable injury by accident or experienced a specific traumatic incident arising out of and in the course of her employment. Thus, the Commission did not err by finding that Plaintiff failed to meet her burden of proving that she sustained a work-related injury by accident or specific traumatic incident.

III. Conclusion

Therefore, for the reasons stated above, we conclude that Plaintiff’s challenges to the Commission’s decision lack merit. As a result, the Commission’s decision should be, and hereby is, affirmed.

AFFIRMED.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).