NO. COA00-580

NORTH CAROLINA COURT OF APPEALS

Filed: 2 January 2001

RONDA WILKINS,
Employee,
Plaintiff,

v.

ASHEBORO ELASTICS,
Employer,

and

EBI COMPANIES,
Carrier,
Defendants.

North Carolina
Industrial Commission
I.C. No. 817021

Appeal by defendants from opinion and award filed 21 January 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 December 2000.

Law Office of Quick & Jackson, by Judy Jackson, for plaintiff-appellee.

McAngus, Goudelock & Courie, PLLC, by H. George Kurani and Andrew R. Ussery, for defendant-appellants.

EAGLES, Chief Judge.

Defendants appeal from an opinion and award of the Industrial Commission (Commission) awarding plaintiff compensation. The sole issue is whether the Commission erred in concluding that plaintiff sustained an injury by accident within the meaning of N.C. Gen. Stat. § 97-2(6) (1999).

The Commission's findings of fact show the following: Plaintiff began employment with the employer, Asheboro Elastics, as

a "calendar operator" on 27 October 1997. This job entailed feeding elastic bands into a "calendar machine," which applied a finish to the elastic. After application of the finish, the elastic bands would empty from the machine into boxes. When the boxes became full, plaintiff would close the boxes, drag them across the floor to a scale, weigh them, and sometimes load them onto wheeled buggies.

On 8 January 1998, while holding a full box weighing 65 pounds in one arm and steadying the buggy with the other, she attempted to load the box into the last slot on a buggy. The bottom of the box snagged on the buggy and became stuck, requiring plaintiff to lift up the box, twist and turn it, and shove it onto the cart. As she performed this task, she felt a sharp pain in her right shoulder and chest. She sustained a rotator cuff tear of her shoulder.

The Commission also made the following finding:

> 6. Although prior to this incident plaintiff had previously run three calendar machines, weighed and lifted a 65 pound box, and placed boxes on buggies, the totality of events and circumstances which resulted in the sharp pain she felt in her shoulder on January 8, 1998 constitutes an unusual event or interruption of her normal work routine. When certain elements of a situation are analyzed alone and out of context, each element may appear normal; however, when placed into the particular context with the cumulative impact of all the elements, a situation may become unusual and constitute an interruption of the normal work routine. The totality of the events on January 8, 1998 was unusual. Plaintiff was operating three calendar machines, moving a 65 pound box which had a tattered and rough bottom which became stuck requiring twisting and pushing while she was loading it one-handed into the last place on a buggy which need [sic] to be steadied. This

> situation and culmination of events is unusual regardless of the fact that the duty of lifting boxes of elastic onto a buggy apparently became part of plaintiff's normal work routine even though she did not believe that loading buggies was a part of her job.

Defendant contends that this finding is not supported by the evidence or law. We disagree.

An injury arising out of and in the course of the employment is compensable under the Workers' Compensation Act only if it is the result of an accident. N.C. Gen. Stat. § 97-2(6) (1999); *Slade v. Hosiery* Mills, 209 N.C. 823, 184 S.E. 844 (1936). Our Supreme Court has defined the term "accident" as "(1) an unlooked for and untoward event which is not expected or designed by the injured employee; (2) a result produced by a fortuitous cause." *Harding v. Thomas & Howard Co.*, 256 N.C. 427, 428, 124 S.E.2d 109, 110-11 (1962). The Supreme Court has held that an accident involves the interruption of the work routine and the introduction thereby of unusual conditions likely to result in unexpected consequences. *Id.* at 429, 124 S.E.2d at 111. Thus, an injury sustained while performing the usual tasks in the usual way is not considered an injury by accident. *Jackson v. Highway Commission*, 272 N.C. 697, 158 S.E.2d 865 (1968). However, "[n]ew conditions of employment to which an employee is introduced and expected to perform regularly do not become a part of the employee's work routine until they have in fact become routine. . . . New conditions of employment cannot become an employee's 'regular course of procedure' or 'established sequence of operations' until the employee has gained proficiency performing in the new employment and become accustomed to the

conditions it entails." *Gunter v. Dayco Corp.*, 317 N.C. 670, 675, 346 S.E.2d 395, 398 (1986).

Findings of fact of the Industrial Commission "may be set aside on appeal only when there is a complete lack of competent evidence to support them." *Click v. Freight Carriers*, 300 N.C. 164, 166, 265 S.E.2d 389, 390 (1980). Plaintiff's testimony shows that her ninety-day training period had not ended as of the time of the injury. She started with operating one machine and after one month or more on the job, she began to run two machines. On the date of the injury, she had not been performing the job "in a usual or customary way." On that date, she was operating three calendar machines, which gave her trouble because the pace was "real fast," causing her to fall behind and for the boxes to accumulate more elastic before she could move and weigh them. Boxes full of elastic ordinarily weighed between ten and fifty pounds but the box she was lifting at the time of her injury weighed sixty five pounds. She also ordinarily lifted boxes onto the buggy with two hands. On this occasion, the buggy moved when she attempted to load the heavy box onto the buggy. The bottom of the box also caught on the bottom of the buggy, requiring her to twist and lift up the box with one arm while steadying the buggy with the other in order to load the box onto the buggy. While making this twisting motion, she injured her shoulder.

Based upon the foregoing evidence, we conclude a finding could reasonably be made that the convergence of all of these circumstances demonstrated an interruption of the work routine and

the introduction thereby of unusual conditions likely to result in unexpected consequences. *Harding,* 256 N.C. at 429, 124 S.E.2d at 111. This finding supports a conclusion that plaintiff sustained an injury by accident.

For the foregoing reasons, the opinion and award is affirmed.

Affirmed.

Judges McGEE and SMITH concur.

Report per Rule 30(e).