NO. COA01-13

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

WILLIAM ALDRIDGE,
Employee-Plaintiff,

v. North Carolina Industrial Commission
I.C. File No. 827311

NORTH CAROLINA DEPARTMENT OF CORRECTION, Employer;

SELF-INSURED (Key-Risk Management)
Defendant.

Appeal by plaintiff from opinion and award entered 18 September 2000 by Commissioner Laura Kranifeld Mavretic of the North Carolina Industrial Commission. Heard in the Court of Appeals 18 February 2002.

Van Camp, Meacham & Newman, PLLC, by Thomas M. Van Camp, for plaintiff appellant.

Attorney General Roy Cooper, by Assistant Attorney General Richard J. Votta, for respondent appellee.

McCULLOUGH, Judge.

Plaintiff William Aldridge appeals from a ruling by the North Carolina Industrial Commission holding that he did not sustain an injury by accident within the meaning of the Workers' Compensation Act while in the employment of defendant North Carolina Department of Corrections.

Plaintiff was hired by defendant as a corrections officer at the Southern Correctional Institute (SCI) in Troy, North Carolina, in early 1997. Plaintiff passed all necessary physical examinations required for the job. His duties entailed monitoring inmates in and out of the housing units, controlling situations among them, standing tower watch, and patrolling the yards. These duties would occasionally require plaintiff to engage in forceful encounters with inmates at the facility.

Plaintiff became involved in the Prison Emergency Response Team (PERT) three months after he was employed at SCI. The team's primary function was to quell riots, recapture escapees, and generally deal with all other types of prison emergencies. Being a part of PERT required plaintiff to engage in additional training beyond what he was required to do as a corrections officer. This training included additional unarmed and armed self-defense and tactical training. He was also required to pass a physical examination every year which included sit-ups, push-ups, and a timed two-mile run. His involvement with PERT was voluntary and plaintiff received no additional compensation due to his participation.

As part of the PERT training, members were to participate in special monthly training sessions. Plaintiff was on such a training exercise on 21 April 1998. On this particular occasion, PERT members were to travel from SCI to Fayetteville for classes on hostage negotiation for half the day. The members rode in a van for two hours on the way to Fayetteville. After the classes, there were tactical exercises designed to train PERT members in what they had learned in hostage negotiation at a nearby warehouse. Each session lasted 15-20 minutes per group. Plaintiff's group performed the training approximately three times.

During the training, PERT members wore bulletproof vests, carried tactical shields and had their weapons drawn. They would enter the building in a squatted or kneeling position. At

one point during the training, plaintiff jumped off the top of a six-foot locker. However, during the entire exercise, plaintiff felt no discomfort associated with his left knee.

The training exercise ended around 4:00 p.m. and the PERT members got back into their van to return to the SCI. Plaintiff's leg room was impeded by a cage in the van, and his knees were up against the cage for the two-hour drive. When plaintiff exited the vehicle once it arrived at SCI, plaintiff's left knee apparently gave way, and he would have fallen to the ground had a fellow PERT member not caught him. Plaintiff testified that:

> Well, we--the passenger in the front seat got out and opened the door. With it being a security van, he had to open the doors. He opened the doors--which was--I believe Officer Myrick opened the doors. I then went to step out of the vehicle. And when I stepped out, it was as though I had stepped into a hole. I was stepping onto concrete at the sidewalk at Gate 1 and I went down. I couldn't see anything that would cause me to fall as far as, you know, rocks or gravel or a hole or anything. I didn't trip or anything like that, but I did--when I stepped out, I went directly to the ground as though my leg wasn't there.

Plaintiff informed the officer in charge that he had fallen but added that he thought he was all right. Plaintiff attempted to walk later on that evening and similarly fell four additional times.

Plaintiff went to the hospital the next morning because the stiffness in his leg had not subsided. On 2 July 1998, plaintiff went to see an orthopedist who diagnosed plaintiff with a medial meniscal tear and chronic ankle sprain. Surgery was performed on 22 July 1998 on plaintiff's left knee. Since the surgery, plaintiff returned to the hospital in January of 1999 for left knee pain. However, since 21 April 1998, plaintiff did not return to work.

Plaintiff had a pre-existing knee condition prior to 21 April 1998. While in the Navy in 1992, plaintiff had surgery on his right knee to repair his ACL. Starting in October of 1995, he frequently had been to the hospital complaining of left knee pain. In December 1996, an MRI of plaintiff's left knee showed possible posterior horn lateral meniscus fraying.

Plaintiff filed for workers' compensation and defendant denied him benefits on 5 July 1998 on the ground that plaintiff's injuries were not the result of an injury by accident. This case was heard before the Full Commission on 7 July 2000. On 18 September 2000, the Full Commission denied plaintiff's claim. It found as follows:

> 15. Although plaintiff's physicians agree some sort of trauma precipitated the tears in plaintiff's meniscus, and that the fatigue resulting from strenuous all-day PERT training contributed to his condition, no "accident" within the meaning of the North Carolina Workers' Compensation Act occurred. Plaintiff did not experience any knee pain during the PERT training in Fayetteville on 21 April 1998. Plaintiff's first pain occurred when he stepped out of the van after arriving in Montgomery County. Plaintiff did not slip, trip or fall. Plaintiff simply stepped out and his leg did not support him. Plaintiff did not experience any twisting in his leg.
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> 16. Plaintiff's participation in PERT training was within his normal duties as a correctional officer. Although this training was rigorous and strenuous, it was normal. Plaintiff suffered no cognizable accident outside his normal duties while engaged in this training.

Based on these and the other findings of fact, the Full Commission made the following conclusions of law:

> 1. On 21 April 1998 plaintiff did not sustain an injury by accident arising out of and in the course of his employment with defendant. Under the Workers' Compensation Act, the terms "injury" and "accident" are not synonymous, and the mere fact of an injury does not, of itself, establish the fact of an accident. For an injury to result by accident, there must be an interruption of the work routine and the introduction of unusual conditions likely to result in unexpected consequences.
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> 2. In this case, plaintiff was participating in his normal job duties. Although plaintiff's PERT training was strenuous, this was a regular part of his employment and plaintiff's injury was not an accident within the meaning of the Workers' Compensation Act.

(Citations omitted.) Plaintiff appeals.

Plaintiff argues on appeal that he suffered an injury by accident arising out of and within the course and scope of his employment with the Department of Corrections.

I.

The standard for appellate review of an opinion and award of the Industrial Commission is well settled. Review "is limited to a determination of (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are supported by the findings." *Barham v. Food World*, 300 N.C. 329, 331, 266 S.E.2d 676, 678 (1980); *see also Calloway v. Memorial Mission Hosp.*, 137 N.C. App. 480, 484, 528 S.E.2d 397, 400 (2000); *Shah v. Howard Johnson*, 140 N.C. App. 58, 61, 535 S.E.2d 577, 580 (2000), *disc. review denied*, 353 N.C. 381, 547 S.E.2d 17 (2001).

In addition, "so long as there is some 'evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary.'" *Id*. at 61-62, 535 S.E.2d at 580 (quoting *Porterfield v. RPC Corp.*, 47 N.C. App. 140, 144, 266 S.E.2d 760, 762 (1980)). The *Calloway* Court went further stating that "our task on appeal is not to weigh the respective evidence but to assess the *competency* of the evidence in support of the full Commission's conclusions." *Calloway*, 137 N.C. App. at 486, 528 S.E.2d at 401.

> To obtain compensation under the Workers' Compensation Act, a claimant must prove that he sustained an "injury by accident arising out of and in the course of the employment." N.C. Gen. Stat. §97-2(6), (18) (Supp. 1996). An accident is an "unlooked for event" and implies a result produced by a "fortuitous cause." *Cody v. Snider Lumber Co.*, 328 N.C. 67, 70, 399 S.E.2d 104, 106 (1991). "If an employee is injured while carrying on his usual tasks in the usual way the injury does not arise by accident." *Gunter v. Dayco Corp*., 317 N.C. 670, 673, 346 S.E.2d 395, 397 (1986). However, if an interruption of the work routine occurs introducing unusual conditions likely to result in unexpected consequences, an accidental cause will be inferred. *Id.*

Lineback v. Wake County Board of Commissioners, 126 N.C. App. 678, 681, 486 S.E.2d 252, 254-55 (1997).

Plaintiff contends that he suffered an accident within the meaning of the Act in that the PERT training was in and of itself a departure from plaintiff's normal work routine and constituted an unusual condition based in part on the fact that PERT training constituted only 1% of the days he worked as a correctional officer. Plaintiff further argues that, even if the PERT training was a routine part of plaintiff's employment, the training performed on 21 April 1998 was unusual so as to warrant reversal of the Industrial Commission.

According to plaintiff's work records, he participated in five training exercises before the 21 April 1998 exercise, occurring on 22 and 27 September 1997, 10 November 1997, 8 December 1997, and 9 March 1998. Correctional Sergeant Monroe Porter, plaintiff's supervisor in PERT, testified that the training on 21 April 1998, while a little more intense, was of the normal kind of training and physical activity that PERT members do when they train. He also testified that all the traveling in vans, being that they would be a bit cramped, was also normal.

> New conditions of employment to which an employee is introduced and expected to perform regularly do not become a part of an employee's work routine until they have in fact become routine. A routine is "1a: a standard practice: regular course of procedure. b: the habitual method of performance of established procedures. . . . 3a: an established sequence of operations (as in a factory or business establishment)." Webster's Third New Int'l Dictionary (1979). 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, 317 N.C. at 675, 346 S.E.2d at 398. However, "once an activity, even a strenuous or otherwise unusual activity, becomes a part of the employee's normal work routine, an injury

caused by such activity is not the result of an interruption of the work routine or otherwise an 'injury by accident' under the Workers' Compensation Act." *Bowles v. CTS of Asheville,* 77 N.C. App. 547, 550, 335 S.E.2d 502, 504 (1985).

While the PERT training did not necessarily occur on a routine basis, we believe that the record before the Full Commission provides ample evidence that PERT training was within plaintiff's normal duties at SCI. After having passed numerous physical tests and participated in several training exercises, plaintiff had become part of the PERT team, and in turn, the PERT team had become part of plaintiff's job, regardless of the fact that he did not get paid specially for his service nor the fact that PERT time made up some fractional proportion of plaintiff's time spent on the job. He performed well during the training exercises, including the exercise on 21 April 1998, the date of the injury. During this exercise, plaintiff actually scaled a set of lockers and leaped from them approximately 6 feet to the floor several times. While this exercise may have been a bit more strenuous than the five previous exercises, it involved the normal type of training that PERT members performed.

Thus, on 21 April 1998, plaintiff was participating in his normal duties in his capacity as a PERT member when he stepped out of the van. We note that there was nothing significant about plaintiff's exit from the van other than the fact that plaintiff's knee gave way. The left knee that failed plaintiff on this day was the same knee that had been shown in 1996 to have a tear in both the medial meniscus and lateral meniscus. Plaintiff was not overexerting himself, nor did he twist his knee, trip, slip, or fall. The Full Commission's finding of fact and conclusion of law that plaintiff was performing his normal duties is supported by the record. Simply, there was no injury by accident, only injury.

Affirmed.

Chief Judge EAGLES and Judge BIGGS concur.

Report per Rule 30(e).