

Affirmed
Author: Riggsbee
Concurring: Mavretic
Ballance

NO. COA00-939

NORTH CAROLINA COURT OF APPEALS

Filed: 17 July 2001

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CLERK OF COURT OF APPEALS
OF NORTH CAROLINA

LESLIE JARRETT,

Employee,
Plaintiff,

N. C. Industrial
Commission
I.C. No. 833469

v.

LORRICK INDUSTRIES d/b/a
HAIR PLUS,

Employer,

and

RELIANCE INSURANCE CO.,

Carrier,
Defendants.

Appeal by defendants from Opinion and Award of the North Carolina Industrial Commission entered 23 May 2000. Heard in the Court of Appeals 23 May 2001.

Walden & Walden, by Daniel S. Walden, for the plaintiff-appellee.

Orbock Bowdenm Ruark & Dillard, PC, by Barbara E. Ruark, for the defendants-appellants.

WYNN, Judge.

Plaintiff-appellee Leslie Jarrett was injured on 4 January 1998 while employed as a hair stylist with defendant-employer-appellant Lorrick Industries, d/b/a Hair Plus, in Winston-Salem. Plaintiff was injured when she reached under a hydraulic chair to remove a sum of petty cash hidden thereunder. She contends that

she injured her lower back, neck, right arm and right leg, and that she sustained such injuries in the course of her employment with defendant-employer.

A Form 19 ("Employer's Report of Injury to Employee") was completed on 20 January 1998, indicating plaintiff's injuries to include "cervical strain back; thus pinching nerve involving arm numbness + neck pain"; a Form 18 ("Notice of Accident to Employer" and "Claim of Employee") was completed and filed on 18 May 1998, wherein plaintiff indicated an injury to her "lower back, neck, right arm and right leg." Plaintiff requested that her claim be assigned for hearing, due to defendants' denial that she injured her lower back on 4 January 1998. Defendants filed a Form 33R, denying the compensability of plaintiff's claim as to her alleged lower back injury, "on the grounds that there is no relationship between plaintiff's original accident on January 4, 1998 and her low back pain. Defendants contend that plaintiff did not complain of any low back pain for over three months and that it is not related [to the 4 January 1998 injury]."

In a pre-trial agreement, the parties stipulated that plaintiff sustained an injury to her neck and right arm on 4 January 1998, which injury "arose out of and in the course of [plaintiff's] employment and is compensable"; defendants therein denied that plaintiff also suffered a lower back injury at that time and denied that any such injury arose out of and in the course of her employment and is compensable.

A hearing was held on 19 August 1998 before Deputy

Commissioner Amy L. Pfeiffer, following which Deputy Commissioner Pfeiffer filed an Opinion and Award on 23 April 1999. The Opinion and Award identified the issues that were to be determined in the hearing, including whether plaintiff sustained a compensable injury to her lower back and right leg in the 4 January 1998 accident, and, if so, to what benefits is she entitled. Deputy Commissioner Pfeiffer made findings that (1) plaintiff experienced a sharp, stabbing pain in her lower back as she reached under the hydraulic chair to retrieve the petty cash; (2) prior to 4 January 1998, plaintiff had not experienced such back pain; (3) when plaintiff went to bed on 4 January 1998, she was experiencing lower back pain; (4) plaintiff reported the incident to her manager the following day, indicating that she thought she had injured her back; (5) plaintiff went to Baptist Hospital's emergency room on 6 January 1998, where x-rays were taken that showed a degenerative disc disease, and she was diagnosed with a cervical strain; (6) Baptist Hospital's record from 6 January 1998 showed that plaintiff's chief complaint at the time was "low back pain"; (7) plaintiff's chief complaint when she was treated on 26 January 1998 at Prime Care was low back pain; (8) plaintiff was seen on 6 April 1998 by Dr. Braswell at Salem Family Practice for low back pain; (9) plaintiff experienced low back pain from the date of the injury on 4 January 1998 until early April 1998; (10) by early April 1998, plaintiff began to complain of severe low back pain, and an MRI on 24 April 1998 revealed moderate to severe spinal stenosis; (11) Dr. Braswell referred plaintiff to Dr. Bell, a neurosurgeon with

Carolina Neurosurgical Associates, who saw plaintiff on 4 May 1998 and found that her back and right leg were of greatest concern at that time; and (12) plaintiff's medical notes corroborated her testimony that she injured her low back when she lifted the hydraulic chair on 4 January 1998.

Accordingly, Deputy Commissioner Pfeiffer made relevant conclusions of law that (1) plaintiff sustained a compensable injury to her low back on 4 January 1998, "when she materially aggravated an underlying, preexisting, asymptomatic condition"; and (2) plaintiff is entitled to all past and future medical treatment for her low back. The Award, therefore, provided that defendants shall provide plaintiff "all reasonable and necessary medical compensation for treatment for" her low back as a result of her compensable injury thereto resulting from the 4 January 1998 accident; the Award also provided that defendants shall pay plaintiff temporary total, temporary partial, and permanent partial disability benefits as appropriate. Defendants appealed, assigning error to various findings of fact and conclusions of law, as well as to the Award "in its entirety on the grounds that it is not supported by competent evidence and contrary to prevailing law."

The Full Commission reviewed the case on 16 December 1999 and filed its Opinion and Award on 23 May 2000, wherein it made the following relevant findings of fact regarding the 4 January 1998 accident and plaintiff's subsequent ailments:

7. When plaintiff grabbed the bag of money [from under the hydraulic chair] with her left hand, she immediately felt a sharp, stabbing pain in her low back that radiated up into her

neck and down her right arm. Plaintiff immediately dropped the chair.

8. Prior to this incident, plaintiff had never experienced that sort of pain in her back or arm. However, she worked the entire day on 4 January 1998.

9. When plaintiff went home on 4 January 1998, she went straight to bed. At that time, plaintiff was experiencing pain in her low back and numbing and tingling in her right arm.

. . . .

14. The 6 January 1998 medical record generated by Baptist Hospital indicated that plaintiff's chief complaint was "low back pain." Low back pain was plaintiff's chief complaint again on 26 January 1998, when she was treated at Prime Care. On 6 April 1998, plaintiff was seen by Sherril D. Braswell, M.D., at Salem Family Practice for low back pain that radiated into her right buttock and which she had experienced intermittently since the incident of 4 January 1998.

15. From the date of the injury by accident on 4 January 1998 until early April 1998, plaintiff had low back pain, but her primary problems involved her cervical spine and right arm. However, by early April 1998, plaintiff began to complain of severe low back pain with radicular components. On 24 April 1998, and MRI of plaintiff's low back revealed that plaintiff had moderate to severe spinal stenosis at L4-5.

16. Dr. Braswell then referred plaintiff to William O. Bell, M.D., a neurosurgeon with Carolina Neurosurgical Associates. On 4 May 1998, Dr. Bell saw plaintiff and found that plaintiff's neck and right arm symptoms had improved, and that plaintiff's back and right leg were her greatest concern at that time. Dr. Bell recommended plaintiff undergo a bilateral decompression at L4-5 on 22 June 1998, but, as of the date of the hearing before the deputy commissioner, the surgery had not been performed because of defendants' denial of plaintiff's back claim.

. . . .

19. Medical notes corroborate plaintiff's testimony that she hurt her low back in addition to her neck and right arm when she lifted the hydraulic chair on 4 January 1998. However, because plaintiff's neck and right arm hurt more than her low back, it was not until several months later, when plaintiff's neck and right arm had improved, that plaintiff began to actively and consistently complain of low back pain and seek treatment for her low back complaint.

20. On 4 January 1998, plaintiff's preexisting, asymptomatic condition of spinal stenosis with mild spondylolisthesis in her low back was significantly aggravated when she lifted the hydraulic chair, and twisted and bent her body to reach under the chair to retrieve the petty cash.

The Full Commission also made the following relevant conclusions of law:

2. On 4 January 1998, plaintiff sustained a compensable injury by accident to her low back when she materially aggravated an underlying, preexisting, but asymptomatic condition. G.S. 97-2(6).

. . . .

5. For her neck, right arm, and low back injuries, plaintiff is entitled to all medical treatment reasonably required to effect a cure, give relief, or lessen the period of disability, subject to the limitation of G.S. 97-25.1. This includes the surgery recommended by Dr. Bell. G.S. 97-2(19), 97-25.

Accordingly, the Full Commission entered the following Award:

1. Defendants shall provide all reasonable and necessary medical compensation for treatment for plaintiff's neck, right arm, and low back as a result of her 4 January 1998 compensable injury by accident, including surgery, if still recommended by Dr. William Bell.

2. No attorney's fees are awarded for plaintiff's counsel at this time.

3. Defendants shall bear the costs.

Defendants appealed from this Opinion and Award, bringing forth eleven assignments of error. Assignments 1-8 challenge the Full Commission's findings of fact 7-9, 14, 15, 19 and 20 on grounds that they are not supported by sufficient competent evidence and are contrary to the evidence; additionally, defendants challenge finding of fact 14 on grounds that "it fails to consider that plaintiff was never examined or treated for low back pain in 1998 when it was allegedly listed as her chief complaint[.]" Defendants also challenge finding of fact 16 on grounds that it is not supported by competent evidence and is contrary to the evidence to the extent the finding "relates the treatment of plaintiff's low back by Dr. Bell with her January 4, 1998 injury[.]" Assignments of error 9-10 challenge the Full Commission's conclusion of law 2, and conclusion of law 5 insofar as it relates to plaintiff's low back, on grounds that these conclusions are "not supported by competent findings of fact based upon the evidence, that the same [are] contrary to the findings of fact, and to existing law." Assignment of error 11 contests "[t]he Full Commission's Award in its entirety on the grounds it is not supported by competent findings of fact based upon the evidence, that it is contrary to the Full Commission's finding of facts, that it is contrary to the conclusions of law, and contrary to existing law."

In their brief, defendants sole argument is that "Plaintiff did not meet her burden of proof on the issue of compensability of

her low back condition," followed by a reference to assignments of error 1-11. Defendants have failed to comply with our Rules of Appellate Procedure.

Generally, our scope of review on appeal is limited to a consideration of the assignments of error properly set out in the record on appeal in accordance with N.C.R. App. P. 10. See N.C.R. App. P. 10(a) (2001). Each assignment of error in the record "shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C.R. App. P. 10(c)(1) (2001). Furthermore, N.C.R. App. P. 10(c)(3) (2001) provides that:

In civil cases, questions that the evidence is legally or factually insufficient to support a particular issue or finding, and challenges directed against any conclusions of law of the trial court based upon such issues or findings, may be combined under a single assignment of error raising both contentions if the record references and the argument under the point sufficiently direct the court's attention to the nature of the question made regarding each such issue or finding or legal conclusion based thereon.

Rule 28 provides that each question in the appellant's brief:

shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.

N.C.R. App. P. 28(b)(5) (2001).

Here, defendants properly assigned error individually to each excepted finding of fact and conclusion of law. However, rather than challenging particular findings and conclusions in their brief, defendants instead assert a general challenge to the credibility and sufficiency of plaintiff's evidence as to her back injury. Defendants contend that "[i]t is not believable that plaintiff injured her back as part of the original injury in January [1998], because she made no complaints to her physicians regarding such pain for over three months."

Defendants have thereby reduced their appeal to a single broadside attack as to the sufficiency of the evidence; such attacks are ineffective to challenge particular findings or conclusions. See *Concrete Serv. Corp. v. Investors Group, Inc.*, 79 N.C. App. 678, 684-85, 340 S.E.2d 755, 759-60, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986); see also *Jones v. Shoji*, 110 N.C. App. 48, 428 S.E.2d 865 (1993), aff'd in part, disc. review improvidently allowed in part, 336 N.C. 581, 444 S.E.2d 203 (1994). Accordingly, we consider only whether the findings of fact support the conclusions of law and whether the conclusions support the Full Commission's Award. See *Concrete Serv. Corp.*, 79 N.C. App. at 685, 340 S.E.2d at 760; see also *Adams v. Kelly Springfield Tire Co.*, 123 N.C. App. 681, 682, 474 S.E.2d 793, 794 (1996) (ordinarily, this Court's review of opinions and awards of the Industrial Commission is limited to a consideration of whether the Commission's findings were supported by any competent evidence and whether the Commission's findings support its conclusions of law);

Setzer v. Boise Cascade Corp., 123 N.C. App. 441, 473 S.E.2d 431 (1996). Furthermore, we note that the Commission is the fact-finding body under our Workers' Compensation Act, and "[t]he 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).

Here, the Commission made extensive findings of fact regarding plaintiff's back injury, detailed above, which are supported by competent evidence and are binding on this Court on appeal. Furthermore, we conclude that those findings of fact support the Commission's conclusions of law and the award entered. Accordingly, we uphold the Opinion and Award of the Full Commission.

Affirmed.

Judges CAMPBELL and BIGGS concur.

Report per Rule 30(e).