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NO. COA04-118-2

NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2005

DANIEL ZBYTNIUK,  
Employee-Plaintiff

v.

North Carolina Industrial Commission  
I.C. File No. 844352

ABF FREIGHT SYSTEMS, INC.  
(f/k/a CARDINAL FREIGHT  
CARRIERS), Self-Insured,  
Employer-Defendant

On remand based on order of the Supreme Court of North Carolina filed on 1 August 2005 for reconsideration in light of the Supreme Court's opinion in *Edmonds v. Fresenius Medical Care*, 165 N.C. App. 811, 600 S.E.2d 501 (2004), *rev'd per curiam*, 359 N.C. 313, 608 S.E.2d 755 (2005). Appeal by defendant from an opinion and award entered 23 September 2003 by the North Carolina Industrial Commission. Originally heard in the Court of Appeals 10 January 2005.

*Patterson, Dilthey, Clay, Bryson & Anderson, L.L.P., by Kathrine E. Downing, Phillip J. Anthony, and Tobias S. Hampson, for plaintiff-appellee.*

*Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Neil P. Andrews and Nadia Z. Schroth, for defendant-appellant.*

CALABRIA, Judge.

This case comes before this Court on remand from our Supreme Court for the limited purpose of reconsidering our opinion filed 15 February 2005 in light of *Edmonds v. Fresenius*

*Medical Care*, 165 N.C. App. 811, 600 S.E.2d 501 (2004), *rev'd per curiam*, 359 N.C.313, 608 S.E.2d 755 (2005). The facts relevant to this case are fully set forth in our previous opinion.

In *Edmonds*, our Supreme Court reaffirmed that cases involving complicated medical questions far above a layman's ordinary experience and knowledge require expert testimony as to causation. *Edmonds*, 165 N.C. App. at 819, 600 S.E.2d at 506. Our Supreme Court further reaffirmed that expert testimony as to possible causes of such medical conditions, while admissible if helpful to the jury, is insufficient to prove causation. *Edmonds*, 165 N.C. App. at 818, 600 S.E.2d at 506. In the instant case and as noted in our previous opinion, defendant solely attacked the expert causation testimony of Dr. Williams. However, defendant did not attack the evidence regarding causation as provided to the Commission by Dr. Ruck. The Commission cited this evidence from Dr. Ruck, finding as fact that Dr. Ruck "diagnosed plaintiff with severe depression that was a direct and proximate result of plaintiff's compensable right knee injury on May 13, 1997." As this finding of fact was not challenged on appeal, it is binding on this Court. Based on this finding, the Commission concluded, "[a]s a result of plaintiff's compensable knee injury and subsequent depression, plaintiff had total loss of wage earning capacity as of October 31, 2000 and continuing."

Because our previous opinion in this case set aside, for purposes of analysis, the competency of Dr. Williams's testimony, defendant's challenges to that testimony based on our Supreme Court's holdings in *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 915 (2000), *Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003), and *Edmonds* are unavailing. Irrespective of defendant's appellate attacks on the competency of Dr. Williams's testimony, the Commission relied upon, found facts upon, and made conclusions of law upon Dr.

Ruck's evidence. Such evidence was competent and fully supports the opinion and award issued in the instant case.

Affirmed.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).