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NO. COA02-771

NORTH CAROLINA COURT OF APPEALS

Filed: 1 April 2003

HELEN HILL,
Employee
Plaintiff-Appellant,

v.

North Carolina Industrial Commission
I.C. File No. 844755

THE SUMMIT,
Employer,

and

EBI COMPANIES,
Carrier
Defendants-Appellee.

Appeal by plaintiff from order entered 18 April 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 February 2003.

David Gantt for plaintiff.

McAngus, Goudelock & Courie, P.L.L.C., by Trula R. Mitchell for defendants.

WYNN, Judge.

Under the North Carolina Workers' Compensation Act, an injury arising out of and in the course of employment is compensable only if caused by an "accident." N.C. Gen. Stat. §97-2(6)(1997). In this appeal, Helen Hill contends the North Carolina Industrial Commission erroneously concluded that her work-related shoulder dislocation was not compensable under the

Workers' Compensation Act because the injury was not caused by an accident. We, however, find the full Commission's findings of fact support the conclusion that Ms. Hill's injuries were not caused by a compensable accident; accordingly, we affirm the decision of the full Commission.

The underlying facts tend to show that on 26 June 1998, Ms. Hill (a certified nursing assistant with approximately 15 years experience) had worked for three days as an employee of The Summit (a nursing home facility). On that date, Ms. Hill attempted to change the diaper of a total-care elderly patient who was severely contracted, meaning the patient was unable to do anything for herself. For total-care patients, The Summit recommended that two people change the diapers to avoid injury. However, on this particular date, Ms. Hill attempted to change the total-care patient's diaper by herself. Ms. Hill testified that during her attempt at changing the patient, the patient's weight (approximately 121 pounds) surprised her when she attempted to lift the patient. She stated that she dislocated her shoulder when the patient shifted during the attempted diaper change.

After visiting the company's physician, Ms. Hill went to the emergency room for treatment. On 1 July 1998, she was treated by Dr. Lorraine K. Doyle of the Asheville Hand Center who diagnosed Ms. Hill as having a shoulder dislocation and advised her to remain out of work for two weeks. Dr. Doyle testified that the shoulder dislocation was caused by some sort of trauma. After two weeks, Ms. Hill returned to work on light duty, which did not involve any lifting or pulling.

On 27 August 1998, Ms. Hill was treated by Dr. Depaolo, an orthopedic surgeon. He diagnosed Ms. Hill as having a left shoulder dislocation and determined that Ms. Hill's range of motion was diminished in that particular shoulder. During his deposition, Dr. Depaolo stated the

MRI showed “what’s called a Hill-Sachs defect, which is an injury to the bone that is characteristic of an anterior shoulder dislocation where the shoulder slides out of place and injures against the edge of the glenoid and damages the head of the humerus.” He further testified this type of injury is caused by “some acute injury in which there’s either pulling of the arm or a sudden movement of the left arm.” Ultimately, Ms. Hill had to have surgery on 25 October 1999, followed by physical therapy.

As part of their duties, certified nursing assistants at The Summit were required to dress, feed, and lift patients. During the two to three rounds per day, the certified nursing assistants would often change the patients’ diapers. Ms. Hill testified that during her fifteen years as a certified nursing assistant it was not uncommon for her to change diapers and clothing of patients who weighed in the 120s.

Ms. Hill filed a workers’ compensation claim; after the full Commission affirmed the deputy commissioner’s denial of her claim, she appealed to this Court.

“Under the North Carolina Workers’ Compensation Act, an injury arising out of and in the course of employment is compensable only if caused by an ‘accident’ and the claimant bears the burden of proving an accident has occurred.” N.C. Gen. Stat. §97-2(6)(1997); *Calderwood v. The Charlotte-Mecklenburg Hospital Authority*, 135 N.C. App. 112, 115, 519 S.E.2d 61, 63 (1999). “An accident is an unlooked for and untoward event which is not expected or designed by the person who suffers the injury.” *Id.* “The elements of an ‘accident’ are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences.” *Adams v. Burlington Industries, Inc.*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983).

Ms. Hill contends the full Commission erred when it concluded she did not have a compensable injury by accident to her left shoulder because it was not caused by an accident arising out of and in the course of her employment. “When considering an appeal from the Commission, its findings are binding if there is any competent evidence to support them, regardless of whether there is evidence which would support a contrary finding. Therefore, our Court is limited to two questions: (1) whether competent evidence exists to support the Commission’s findings, and (2) whether those findings justify its conclusions of law.” *Shaw v. Smith & Jennings, Inc.*, 130 N.C. App. 442, 445, 503 S.E.2d 113, 116 (1998).

In this case, Ms. Hill challenges the full Commission’s findings of fact that:

3. It is not clear from her testimony at which point she contends the injury occurred.

...

5. Plaintiff testified she was surprised at the patient’s weight although the patient was not particularly heavy. Plaintiff’s subjective assessment of the patient’s weight, even if miscalculated, is not an interruption of her normal work routine. Plaintiff would be required to work with new patients from time to time and to make such assessments of a patient’s weight.

After a thorough review of the record, transcript, and depositions, we find the full Commission’s findings of fact are supported by competent evidence. During her testimony, Ms. Hill testified that her left shoulder came out of joint when she was attempting to lift the patient and the patient moved her legs or shifted. Ms. Hill also testified that it was not uncommon for her to care for patients whose weight was in the 120s. Accordingly, these findings of fact are supported by competent evidence.

Based upon the findings of fact, the full Commission concluded:

Injuries ... such as plaintiff’s in this case require an interruption of plaintiff’s work routine or the introduction of unusual conditions

likely to result in an unlooked-for event or unexpected consequences. No such interruption or introduction occurred in this case and plaintiff's case is therefore noncompensable. ... Given the facts of this case and the existing law, plaintiff has failed to prove by the greater weight of the evidence that the injury she sustained on June 26, 1998 was caused by an accident arising out of and in the course of her employment with the Defendant-employer.

Our review of the record indicates the findings of fact supported this conclusion of law. *See Harrison v. Lucent Technologies, Inc.*, ___ N.C. App. ___, 575 S.E.2d 825 (2003)(holding that the full Commission's findings of fact supported the conclusion that a secretary's left shoulder injury was the result of an accident within the meaning of our Workers' Compensation Act).

Nonetheless, Ms. Hill contends that "subjective misjudgments by a worker in lifting accidents can constitute the unlooked for and untoward event that was not expected by the employee and becomes the accident required by N.C.G.S. §97-2(6)." We disagree.

"The elements of an 'accident' are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Adams v. Burlington Industries, Inc.*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983). Therefore, an injury that results from normal work conditions and activity is not compensable under our Workers' Compensation Act. In this case, Ms. Hill testified it was not uncommon for her to change the diapers and clothing of patients weighing in the 120s. Accordingly, Ms. Hill's injury was not caused by an accident and is not compensable under our Workers' Compensation Act.

Affirmed.

Judges TIMMONS-GOODSON and LEVINSON concur.

Report per Rule 30(e).