NO. COA10-1253
NORTH CAROLINA COURT OF APPEALS

Filed: 7 June 2011

SHERRON H. CAMPBELL,
Employee,
Plaintiff,

v.

NATIONAL PIPE & PLASTICS, INC., Employer, and TWIN CITY FIRE INSURANCE COMPANY, Carrier,
Defendants.

North Carolina Industrial Commission
I.C. File 883751

Appeal by defendants from opinion and award entered 17 August 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 March 2011.

Patterson Harkavy LLP, by Valerie A. Johnson and Narendra K. Ghosh, for plaintiff-appellee.

McAngus, Goudelock & Courie, P.L.L.C., by Laura Carter and Ben Moeller, for defendants-appellants.

MARTIN, Chief Judge.

In August 2010, the Full Commission (the Commission) entered an opinion and award affirming the deputy commissioner's opinion and award, in which the deputy commissioner found that plaintiff Sherron H. Campbell had suffered a compensable injury

by accident materially aggravating her preexisting psychiatric condition and concluded that plaintiff is entitled to continuing temporary total disability benefits and payment of medical expenses. Defendant-employer National Pipe & Plastics, Inc. and defendant-carrier Twin City Fire Insurance Company[1] (collectively "defendants") appeal from the Commission's opinion and award. We affirm.

Plaintiff began working for defendant National Pipe & Plastics, Inc., a manufacturing facility that produces PVC pipe, in December 1987. During her employment, she worked as a material handler, a forklift driver, and a blender operator. In May 1998, Dr. Barry N. Williams, a psychiatrist, diagnosed plaintiff with depression. Following that, Dr. Williams treated plaintiff on a regular basis for several years and prescribed various medications for her. Dr. Williams removed plaintiff from work for approximately two weeks in May 1998 and again in 2004. During the course of her treatment with Dr. Williams, plaintiff's depressive symptoms showed improvement, but there were events of relapse or recurrence. A chronic stressor for

[1] The caption of the Commission's opinion and award indicates the carrier is Twin City Fire Insurance Company, although the parties stipulate that the carrier is the Hartford. Consistent with the caption of the Commission's opinion and award, we refer to the carrier as Twin City Fire Insurance Company.

plaintiff is her husband's difficulty with alcohol abuse. In 2005, Dr. Williams also diagnosed plaintiff with generalized anxiety disorder.

On 12 January 2008, plaintiff sustained a compensable work-related injury by accident to her right hand during the course of her employment with defendant National Pipe & Plastics, Inc. As plaintiff backed out of the way of a co-worker, who was operating a forklift, she backed between two pallets and tripped over a piece of wood, which lay on the floor. This caused her to fall forward and, as she fell, to keep her head from striking a pipe, plaintiff grasped a piece of the pipe. In doing so, she injured her right ring finger and fractured her right thumb.

On 16 January 2008, plaintiff returned to work in a light-duty capacity performing paperwork in the company office. Following that, during periods from mid-January 2008 until June 2008, Dr. William Craig, the orthopedic surgeon who treated plaintiff following her injury, removed plaintiff from work. Defendants compensated plaintiff during the periods Dr. Craig removed her from work.

On 21 February 2008, plaintiff visited Dr. Williams for the first time following her compensable injury. She reported that she had suffered an injury at work, that her husband had

suffered a stroke earlier that month, and that her ability to function was being challenged. Dr. Williams removed plaintiff from work until 13 March 2008. In April 2008, Dr. Williams recommended that plaintiff stop working due to her psychiatric condition, but plaintiff continued to work. On 3 June 2008, Dr. Williams again removed plaintiff from work, and plaintiff has not yet returned to work.

In November 2008, after defendants had stopped paying plaintiff disability benefits, plaintiff filed a Form 18 and requested that her claim be assigned a hearing.

In January 2009, Dr. Craig placed plaintiff at maximum medical improvement and assigned a ten percent permanent partial disability rating to her right hand. In April 2009, Dr. Anthony J. DeFranzo at Wake Forest Baptist Medical Center provided plaintiff a second opinion assigning a thirty percent permanent partial disability rating to her right hand.

In May 2009, plaintiff was evaluated by Dr. John F. Warren. Dr. Warren opined that plaintiff's problems "were more a result of longstanding and pervasive attitudes, behaviors and coping mechanisms that were more consistent with a personality disorder and malingering." He opined that plaintiff's work-related injury did not cause or substantially contribute to the

development of her alleged psychiatric condition and that plaintiff was able to work.

In June 2009, plaintiff was evaluated by Dr. Steven Prakken, a board certified physician in psychiatry and pain management. Dr. Prakken conducted a physical evaluation of plaintiff and agreed with Dr. DeFranzo's assessment of plaintiff's physical condition. Dr. Prakken also evaluated plaintiff's psychiatric condition and opined that plaintiff was suffering from depression and that plaintiff could not sustain work activities, particularly the work she was doing when she was injured.

In its opinion and award, the Commission made the following findings relevant to the issues presented in this appeal:

> 17. In weighing the conflicting medical testimony in this matter, the Full Commission assigns greater weight to the medical opinions of Dr. Williams and Dr. Prakken than that of Dr. Warren on the issue of whether Plaintiff's compensable January 12, 2008 injury aggravated her preexisting psychiatric condition. Both Dr. Williams and Dr. Prakken have provided treatment to Plaintiff, whereas Dr. Warren based his opinions solely upon a one-time Independent Medical Evaluation.
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> 18. . . . [T]he Full Commission finds that Plaintiff has been unable to work since June 3, 2008, due to her psychiatric condition, which was substantially aggravated by her January 12, 2008 compensable injury.

It then made the following conclusions:

> 1. On January 12, 2008, Plaintiff sustained a compensable injury by accident arising out of and in the course of her employment with Defendant-Employer.
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> 2. . . . Plaintiff's preexisting psychiatric condition was materially aggravated by her compensable January 12, 2008 accident.
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> 3. Plaintiff is entitled to temporary total disability benefits at the weekly rate of $364.71 from January 13 to 15, 2008, from February 21 to 28, 2008, and from June 3, 2008, and continuing until such time as she returns to work or further order of the Commission.
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> 4. As a result of her January 12, 2008 compensable accident, Plaintiff is entitled to receive further medical treatment that would effect a cure, give relief or lessen her period of disability, including treatment for her psychiatric [sic] treatment.

On appeal, defendants first contend that the Commission erred by giving weight to Dr. Williams's testimony. Defendants contend Dr. Williams's testimony was speculation and conjecture and was therefore incompetent evidence. We disagree.

In reviewing an opinion and award of the Commission, we are "limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of

fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). "In passing upon issues of fact, the Commission, like any other trier of facts, is the sole judge of the credibility of the witnesses, and of the weight to be given to their testimony." *Anderson v. Nw. Motor Co.*, 233 N.C. 372, 376, 64 S.E.2d 265, 268 (1951). "[I]t may accept or reject the testimony of a witness, either in whole or in part, depending solely upon whether it believes or disbelieves the same." *Id.*

"When a pre-existing, non-disabling, non-job-related condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment . . . so that disability results, then the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent." *Hoyle v. Carolina Associated Mills*, 122 N.C. App. 462, 466, 470 S.E.2d 357, 359 (1996) (omission in original) (internal quotation marks omitted). "[W]here the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Young v. Hickory Bus. Furn.*, 353 N.C.

227, 230, 538 S.E.2d 912, 915 (2000) (internal quotation marks omitted). "However, when such expert opinion testimony is based merely upon speculation and conjecture, it can be of no more value than that of a layman's opinion. As such, it is not sufficiently reliable to qualify as competent evidence on issues of medical causation." *Id.* "[A]n expert is not competent to testify as to a causal relation which rests upon mere speculation or possibility." *Id.* (internal quotation marks omitted).

Defendants, relying on *Young*, contend that Dr. Williams's testimony was speculation and conjecture. They suggest that because Dr. Williams could not identify the degree to which plaintiff's compensable injury contributed to her preexisting depression and because Dr. Williams stated that plaintiff had a variety of stressors in addition to her work-related injury, his testimony was speculation and conjecture and therefore incompetent evidence as to causation.

Defendants' reliance on *Young* is misplaced. In *Young*, the medical expert testified that he "frequently could not ascribe a cause for fibromyalgia in his patients" and that while "he knew of several other potential causes of [the plaintiff's] fibromyalgia, he did not pursue any testing to determine if they

were, in fact, the cause of her symptoms" and, in opining that the plaintiff's fibromyalgia "could" be related to her work-related injury, relied on the maxim "'*post hoc, ergo propter hoc*,' which is to say in Latin, 'after this, therefore because of this.'" *Id.* at 231-32, 538 S.E.2d at 915-16. Our Supreme Court held that the expert's opinion was "based entirely upon conjecture and speculation," and was therefore not competent evidence as to causation. *Id.* at 231-33, 538 S.E.2d at 916-17. In contrast, here, Dr. Williams definitively attributed the exacerbation of plaintiff's preexisting condition to her work-related injury: Dr. Williams testified that "[t]here is no question that the injury has contributed to . . . an exacerbation of [plaintiff's] symptoms."

Furthermore, although defendants contend Dr. Williams's testimony was incompetent because he failed to identify the degree to which plaintiff's inability to work was due to her work-related injury, "[t]he work-related injury need not be the sole cause of the problems to render an injury compensable." *Hoyle*, 122 N.C. App. at 465, 470 S.E.2d at 359. "If the work-related accident contributed in some reasonable degree to plaintiff's disability, she is entitled to compensation." *Id.* at 466, 470 S.E.2d at 359 (internal quotation marks omitted).

Although Dr. Williams testified that he could not "parse out" plaintiff's thumb injury as a significant contributing factor of plaintiff's inability to work because it "is part of the stressor," and testified that he was "not in the position . . . [to give her a] rating of disability based on her physical illness," he also opined several times that plaintiff's work-related injury contributed to an exacerbation of her symptoms and that the aggravation of plaintiff's symptoms was significant. Thus, Dr. Williams's testimony was competent evidence that plaintiff's work-related accident "contributed in some reasonable degree" to her disability. *See id.*

In arguing that Dr. Williams's opinion was speculative, defendants also contend that a mere inability to work following a work-related injury fails to show a causal connection between the work-related injury and the inability to work. They point to Dr. Williams's statement during cross-examination that plaintiff's preexisting condition was exacerbated because after her work-related injury, plaintiff has been unable to work. However, defendants ignore other portions of Dr. Williams's testimony, including his testimony that plaintiff reported having "an increase in depressive symptoms and an increase in difficulty functioning in general" as a result of her work-

related injury, that it is difficult for plaintiff "to do her work without hurting" as a result of her work-related injury, and that, after trying to return to work following her work-related injury, plaintiff found "that her symptoms flare[d] to such a degree that she beg[an] to have suicidal thinking." There is no merit to defendants' contention on this point.

Defendants also note that Dr. Williams's conclusion that plaintiff could not work is based on plaintiff's reported history. Defendants note that the Commission failed to make a finding that plaintiff was credible, and contend that she is not, pointing to various portions of her testimony they believe support this contention.

"[I]t is well-established that a patient's statements to her treating physician are reliable." *Cawthorn v. Mission Hosp., Inc.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___ (April 19, 2011) (No. 10-748) (recognizing that a medical expert is entitled to rely on a plaintiff's "subjective" reports of injuries and symptoms in forming an opinion as to causation). "A physician's diagnosis often depends on the patient's subjective complaints, and this does not render the physician's opinion incompetent as a matter of law." *Jenkins v. Pub. Serv. Co. of N.C.*, 134 N.C. App. 405, 410, 518 S.E.2d 6, 9 (1999),

rev'd in part on other grounds, 351 N.C. 341, 524 S.E.2d 805 (2000).

Dr. Williams was entitled to rely on plaintiff's reported history in forming his opinion that her work-related injury exacerbated her preexisting depression. Furthermore, the Commission "is the sole judge of the credibility of the witnesses, and of the weight to be given to their testimony." *Anderson,* 233 N.C. at 376, 64 S.E.2d at 268. Thus, we are not permitted to make credibility determinations or to reweigh the evidence on appeal. Defendants' contentions are without merit.

Defendants next contend that the Commission erred by giving weight to Dr. Prakken's testimony. They contend that the "Commission's basis for providing greater weight to the testimony of Dr. Prakken as opposed to Dr. Warren is not supported by the record." These contentions are without merit.

"[T]he Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible." *Deese*, 352 N.C. at 116, 530 S.E.2d at 553 (stating that the portion of the Commission's finding explaining why it found the plaintiff's testimony credible was unnecessary); *see also Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 307, 661 S.E.2d 709, 715 (2008) (stating that "while

the Commission did include reasons for its credibility determinations in [its finding,]" "it was not required to do so").

> Requiring the Commission to explain its credibility determinations and allowing the Court of Appeals to review the Commission's explanation of those credibility determinations would be inconsistent with our legal system's tradition of not requiring the fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.

Deese, 352 N.C. at 116-17, 530 S.E.2d at 553. The Commission was not required to explain its basis for according weight to Dr. Prakken's testimony. Defendants' argument is thus overruled.

Defendants' final two arguments are that, because the testimony of Drs. Williams and Prakken is incompetent evidence, the Commission erred in concluding that plaintiff is currently disabled and that she is entitled to further medical treatment. Because we conclude that the testimony of Drs. Williams and Prakken was competent evidence supporting the Commission's findings, we overrule these arguments.

Affirmed.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).