NO. COA02-681

NORTH CAROLINA COURT OF APPEALS

Filed: 18 March 2003

KENNETH R. McKINNON,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 901411

L&S HOLDING CO.,
T/A WOODLAND FARMS,
Employer

and

KEY BENEFIT SERVICES,
Carrier,
Defendants.

Appeal by defendant-carrier from the Opinion and Award of the North Carolina Industrial Commission filed 20 February 2002. Heard in the Court of Appeals 12 February 2003.

No brief filed for employee-plaintiff.

Teague, Campbell, Dennis & Gorham, L.L.P., by Dayle A. Flammia, for defendant-appellee-employer.

Orbock Bowden Ruark & Dillard, PC, by Barbara E. Ruark and Stephanie B. Woods, for defendant-appellant-carrier.

TYSON, Judge.

Key Benefit Services ("Key") appeals from the findings and award of the North Carolina Industrial Commission ("Commission") which concluded that Key was estopped from denying coverage for Kenneth R. McKinnon's ("plaintiff") injuries. We affirm.

I. Background

On 21 December 1998, plaintiff was employed by Woodland Farms("Woodland") working at its Liberty Cotton Gin facility ("Liberty") as a press operator when his thumb and all of the fingers on his right hand were amputated. L&S Holding Company ("L&S") operated several business entities, including Woodland. Liberty was an unincorporated activity, part of Woodland, and operated on a seasonal basis. Defendants stipulated that plaintiff was entitled to compensation under the Workers' Compensation Act but disputed who owed the money. Without prejudice to its right to assert entitlement to insurance coverage, L&S paid all of plaintiff's medical expenses and the equivalent of temporary total disability to plaintiff prior to the hearing before the Commission.

The Commission found that Woodland and Liberty operated out of two bank accounts, the "Woodland Farms" payroll account and the "Woodland Farms, Inc. DBA Liberty Gin" account. Profits from Liberty went into both accounts. Liberty had been a part of Woodland since 1986 and remained a part when Woodland was merged into L&S prior to 1998. Woodland's operation included the growing of cotton which was processed at Liberty as a part of Woodland's overall operation. The Commission expressly found "Woodland Farms and Liberty Gin are not separate entities."

Ben Singleton, an insurance agent, had obtained workers' compensation insurance for L&S in the past. Singleton and Key use classification codes to assess risk prior to coverage.

These codes are unique to the insurance industry and require special knowledge to determine which codes to use for different employees. The Commission found:

> Mr. Singleton was aware of how jobs were grouped together by defendant-employer and was familiar with defendant-employer's operations from past dealings and never informed defendant-employer to group jobs in any other manner. Defendant-employer provided information that Mr. Singleton requested and relied on him to instruct defendant-employer how to place jobs within the classification codes. Defendant-employer used the codes as instructed by Mr. Singleton.

L&S obtained workers' compensation insurance from Key through Singleton for Woodland. Plaintiff's salary as well as that of secretaries at Liberty were included in the computation of premiums for that insurance. L&S relied on Singleton in the placement of plaintiff's job under hay, grain and feed dealer classification because of the seasonal nature of his job.

The payments for the insurance came from the "Woodland Farms, Inc. DBA Liberty Gin" checking account. The Commission found that Key had notice of the cotton gin from the Experience Rating provided by the Rate Bureau and from Singleton who was aware of the cotton gin.

The Commission concluded that Key was estopped from denying workers' compensation coverage. The Commission ordered Key to pay plaintiff disability, to pay all of his medical expenses, and to reimburse L&S for payments it made for medical expenses and compensation to plaintiff.

II. Issue

Key contends the Commission erred in finding that it provided insurance coverage to Liberty and ordering Key to provide coverage for plaintiff's workers' compensation award.

III. Standard of Review

This Court's review of an award from the Commission is limited to whether there is any competent evidence to support the Commission's findings of fact and whether those findings support the Commission's conclusions of law. *Effingham v. Kroger Co.*, 149 N.C. App. 105, 109, 561 S.E.2d 287, 291 (2002). The findings of fact are conclusive on appeal if there is competent evidence to support them, even if evidence is presented to the contrary. *Id.* The Commission's conclusions of law are reviewable *de novo. Id.*

IV. Coverage

A. Code Classifications

Key contends that the Commission erred in finding it provided insurance coverage to Liberty and its employees and argues (1) no evidence shows L&S requested Key to insure Liberty and (2) Liberty was a separate entity from Woodland. We disagree.

There is competent evidence in the record to support the findings of the Commission. Both Murphy Evans, president of L&S, and Priscilla Christian, secretary for Woodland, testified that Woodland Farms had two bank accounts: "Woodland Farms payroll account" and "Woodland Farms d/b/a Liberty Gin". Liberty's profits went into both accounts. Liberty, Woodland, and L&S operate under the same tax number. Woodland had owned Liberty since 1986 and continued to own Liberty when L&S acquired Woodland prior to 1998.

To acquire workers' compensation insurance, employee classification codes are assigned based upon the job description and risk level. Singleton, the insurance agent who procured the policy with Key, testified that he had intimate knowledge of the insurance classification codes and advised L&S regarding workers' compensation insurance and classification codes. Woodland's policy listed the classification codes for which Key contracted to provide insurance coverage. Singleton testified he completed forms based upon conversations with L&S owners

but did not remember where the exact conversations occurred. The code for cotton gin employees was not listed on the insurance.

After Woodland was insured by Key for the first year, Key's representative contacted Ms. Christian for a phone audit. Christian was to review the letter and contract to make sure it was correct. Payroll amounts, used to determine the premiums, were corrected during this audit. The code for cotton gin workers was again not present. Ms. Christian testified that Woodland Farms had grouped the cotton gin employees under hay, grain or feed dealer category and she was not aware of a separate code for cotton gin.

Singleton testified that although he was trained in assigning classifications, he would not expect a layperson to know the proper classifications because the "class code identifier is not always descriptive." He further testified that part of his job was to advise the insured on insurance and classification codes. He stated that "it's very difficult" for someone like Ms. Christian to know that a cotton gin employee was not covered by the codes listed.

During 1997 and 1998, Key accepted premium payments from a bank account for "Woodland Farms, Inc. d/b/a Liberty Gin" which they deposited. Plaintiff's salary was included in the calculations for the workers' compensation premium under the classification of hay, grain and feed dealer. Plaintiff's only employment with Woodland Farms and L&S was to work at Liberty. Singleton admitted that he knew L&S operated a cotton gin prior to the accident. Competent evidence in the record supports the findings of the Commission.

B. Estoppel

Estoppel has long been used to require an insurance company to provide coverage in a workers' compensation claim. *Aldridge v. Motor Co.*, 262 N.C. 248, 251, 136 S.E.2d 591, 593 (1964).

> An estoppel can arise in any legal setting, and our appellate courts have prudently and repeatedly applied the doctrine in workers' compensation cases to thwart an insurance carrier's subsequent attempt to avoid coverage of a work-related injury, howbeit upon a legitimate ground, when the carrier has previously and routinely accepted the payment of insurance premiums pertaining to the injured individual.

Godley v. County of Pitt, 306 N.C. 357, 360, 293 S.E.2d 167, 169 (1982). *See also, Moore v. Electric Co.*, 264 N.C. 667, 142 S.E.2d 659 (1965); *Aldridge, supra*; *Greene v. Spivey*, 236 N.C. 435, 73 S.E.2d 488 (1952); *Pearson v. Pearson, Inc.*, 222 N.C. 69, 21 S.E.2d 879 (1942); *Garrett v. Garrett & Garrett Farms*, 39 N.C. App. 210, 249 S.E.2d 808 (1978), *disc. rev. denied*, 296 N.C. 736, 254 S.E.2d 178 (1979); *Britt v. Construction Co.*, 35 N.C. App. 23, 240 S.E.2d 479 (1978); *Allred v. Woodyards*, Inc., 32 N.C. App. 516, 232 S.E.2d 879 (1977). "In order to estop a party from asserting a defense, the party who desires to take advantage of the estoppel must show that in reliance on the other party's action, he changed his position to his detriment." *Blackwelder v. City of Winston-Salem*, 332 N.C. 319, 324-25, 420 S.E.2d 432, 436 (1992).

Here, L&S relied on the expert knowledge of Singleton to acquire workers' compensation insurance for all of Woodland Farms employees including those who worked at the Liberty cotton gin. Based on this reliance, plaintiff was included under a classification code which did not specifically include cotton gin workers. Key accepted the benefits of this reliance when it (1) accepted premium payments derived from calculations which included plaintiff's salary and (2) accepted those payments from "Woodland Farms d/b/a Liberty Gin." The Commission correctly concluded that Key was estopped from denying coverage for plaintiff.

IV. Conclusion

We hold that competent evidence in the record supports the Commission's findings of fact. The findings support the Commission's conclusion of law that Key was estopped from denying workers' compensation coverage to plaintiff.

Affirmed.

Judge MCCULLOUGH and CALABRIA concur.

Report per Rule 30(e).