NO. COA02-418

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

REATHER DRUMGOLD,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 907057

PERDUE FARMS, INC.,
Employer,

SELF-INSURED (Crawford & Co.,
Servicing Agent),
Defendant.

Appeal by defendant from opinion and award entered 30 January 2002 by the Full Industrial Commission. Heard in the Court of Appeals 13 November 2002.

Law Offices of Robert J. Willis, by Robert J. Willis, for plaintiff-appellee.

Haynsworth Baldwin Johnson and Greaves, L.L.C., by Brian M. Freedman, for defendant-appellant.

EAGLES, Chief Judge.

Purdue Farms, Inc. ("defendant") appeals from an opinion of the Industrial Commission awarding Reather Drumgold ("plaintiff") temporary total disability benefits, attorney fees, and medical expenses for treatment of her carpal tunnel syndrome. We dismiss this appeal because it is interlocutory.

The evidence before the Industrial Commission tended to show the following. Plaintiff was employed at defendant's factory in Lewiston from 1 March 1985 until 10 September 1997. Plaintiff first worked as a packer for defendant, which required plaintiff to price and package whole chickens as the chickens moved along a conveyor line. Plaintiff was transferred to the evisceration section of defendant's plant on 9 April 1996. Plaintiff testified that she requested a transfer from the packing section because of pain in her hands and right shoulder. Plaintiff worked in the evisceration section as a "draw hand." This job assignment required plaintiff to cut defective parts off poultry with knives and scissors as the poultry moved along a conveyor line. Plaintiff testified that the pain in her hands and right shoulder intensified after her transfer to the evisceration section. Plaintiff began to see a doctor as a result of this pain. Plaintiff was taken off the draw hand job and assigned a job as "liver puller." The liver puller job required plaintiff to reach into chicken carcasses as they traveled by conveyor line and position the livers for removal by a machine. Plaintiff continued working as a liver puller until her employment with defendant ended.

Plaintiff consulted Dr. Hansen from April 1996 onwards and Dr. Doss starting in May 1996. Both doctors were associated with defendant's "Wellness Center." Dr. Doss recommended surgery for plaintiff's carpal tunnel syndrome in August 1996. However, Dr. Hansen suggested that plaintiff would not need the surgery if she were allowed to rotate jobs every two hours. In September 1997, plaintiff was diagnosed by Dr. Bruce Tetalman as having fibromyalgia in her shoulder and was excused from work. Plaintiff sought treatment from Dr. Morales in autumn 1997 without obtaining prior permission from defendant or from the Industrial Commission. On 7 November 1997, Dr. Morales performed carpal tunnel release surgery on plaintiff's right hand, which provided her some relief from pain.

In January 1999, plaintiff filed for workers' compensation disability as a result of her carpal tunnel syndrome. Defendant denied her claim. A deputy commissioner for the Industrial Commission heard plaintiff's claim in June 2000. On 30 November 2000, the deputy commissioner issued an opinion awarding plaintiff temporary total disability and medical expenses for bilateral carpal tunnel syndrome. Defendant appealed the deputy commissioner's award to the Full Commission, where it was affirmed. From this opinion and award, defendant appeals to this Court.

As a preliminary matter, we must determine whether this appeal is properly before this Court. An opinion and award of the Industrial Commission can be appealed to this Court only upon "the same terms and conditions as govern appeals from the superior court." G.S. §97-86 (2001). A party has the right to appeal from a final judgment of a superior court. G.S. §7A-27 (2001). Therefore, "an appeal of right arises only from a final order or decision of the Industrial Commission." *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002) (citing *Ledford v. Asheville Housing Authority*, 125 N.C. App. 597, 598-99, 482 S.E.2d 544, 545), *disc. rev. denied*, 346 N.C. 280, 487 S.E.2d 550 (1997).

A final decision of the Industrial Commission is an opinion "that determines the entire controversy between the parties, leaving nothing to be decided." *Ratchford*, 150 N.C. App. at 199, 564 S.E.2d at 247; *see also Riggins v. Elkay Southern Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999). If an opinion and award of the Industrial Commission "determines one but not all of the issues in a workers' compensation case," it is interlocutory. *Ratchford*, 150 N.C. App. at 199, 564 S.E.2d at 247. Similarly, while we recognize that workers' compensation claims may continue under an open award for weeks or even years, an opinion and award that on its face contemplates further proceedings or which does not fully dispose of the pending stage of

the litigation is interlocutory. *See Nash v. Conrad Industries*, 62 N.C. App. 612, 618, 303 S.E.2d 373, 377, *aff'd per curiam*, 309 N.C. 629, 308 S.E.2d 334 (1983). "An opinion and award that settles preliminary questions of compensability but leaves unresolved the amount of compensation to which the plaintiff is entitled and expressly reserves final disposition of the matter pending receipt of further evidence is interlocutory." *Riggins v. Elkay Southern Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999).

Here, the Industrial Commission's opinion and award specifically reserved the issue of plaintiff's permanent partial disability for further review. On its face, the opinion does not resolve all of the matters in this case. Although the opinion determined that plaintiff suffered from a compensable occupational condition, the total amount of compensation has not yet been determined. Nothing in the record indicates that the parties have resolved the issue of plaintiff's compensation independently after the Full Commission entered its opinion. We therefore dismiss this appeal as interlocutory.

Appeal dismissed.

Judges McGEE and HUDSON concur.

Report per Rule 30(e).