NO. COA02-1358

NORTH CAROLINA COURT OF APPEALS

Filed: 1 July 2003

MARTIN HUTSON,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 908646

PHILLIPS FLOOR SERVICE,
Employer-Defendant,

and

TRAVELERS INSURANCE COMPANY,
Carrier-Defendant.

Appeal by plaintiff from opinion and award entered 27 June 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 June 2003.

Brumbaugh, Mu & King, P.A., by Angela D. Vandivier, for plaintiff-appellant.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Thomas M. Morrow and Jesse S. Shapiro, for defendant-appellee.

WYNN, Judge.

By this appeal, Martin Hutson presents two issues for our consideration: (1) Did the Commission erroneously conclude his contact dermatitis was not an occupational disease, and (2) Was the Commission's denial of his motion to reopen the record an abuse of discretion? We affirm the opinion and award of the Commission.

Phillips Floor Service employed Mr. Hutson as a hardwood floor installer and finisher from October 1997 until January 1999. Finishing hardwood floors required sanding, buffing and placing a coat of sealant on the floors. Once the sealant dried, a coat of polyurethane was applied with a hand applicator.

In mid-June 1998, Mr. Hutson began to experience a breakout on his hands. Dr. Pirkko Reichling, a dermatologist, treated the rash with Prednisone, and for a time the rash cleared up; however, the rash returned. When Mr. Hutson wore gloves while working, his hands would sweat and break out. The rash eventually spread over his body. Mr. Hutson left Phillips Floor Service's employment in January 1999, when his condition did not improve.

In February 2001, Dr. Douglas Shirley, a dermatologist, diagnosed Mr. Hutson's condition as contact dermatitis after he tested positive to the chemicals ethylenediamine dihydrochloride and cobalt dichloride. At the time Dr. Shirley saw Mr. Hutson, his hands were clear of any rashes and showed no signs of scarring.

Mr. Hutson alleges that he is unable to work as a floor finisher due to his allergies to the polyurethane coating and other cross-reactants used during the floor finishing process. He continues to experience breakouts, which may last anywhere from a few days to a couple of weeks, especially during warm weather.

Mr. Hutson filed a claim seeking compensation for his contact dermatitis. When Phillips Floor Service denied Mr. Hutson's claim, the claim was assigned for hearing. Deputy Commissioner W. Bain Jones, Jr. heard this matter on 10 May 2001, and thereafter, held the record open for the deposition of medical experts and the preparation of briefs by the parties. After two extensions of time, the deputy commissioner denied Mr. Hutson's claim for

compensation. On appeal, the Commission affirmed the opinion and award of Deputy Commissioner Jones. Mr. Hutson appeals.

Mr. Hutson first argues that the Commission erred in denying his claim for compensation for an occupational disease. This Court's review of an opinion and award of the Industrial Commission is limited to the following: (1) whether there is any competent evidence to support its findings; and (2) whether the Commission's findings support its conclusions of law and decision. *Hatcher v. Daniel Int'l Corp.*, 153 N.C. App. 776, 778, 571 S.E.2d 20, 22 (2002). The Commission is "the sole judge of the weight and credibility of the evidence." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). Accordingly, its findings, if supported by competent evidence, are binding upon this Court on appeal, although there may be evidence to support findings to the contrary. *Hatcher*, 153 N.C. App. at 778, 571 S.E.2d at 22. The Commission's conclusions of law, however, are reviewable *de novo*. *Arnold v. Wal-Mart Stores, Inc.*, ___ N.C. App. ___, ___, 571 S.E.2d 888, 891 (2002).

N.C. Gen. Stat. §97-52 provides that "disablement or death of an employee resulting from an occupational disease" is compensable under the Worker's Compensation Act. N.C. Gen. Stat. §97-53 lists twenty-seven compensable occupational diseases under the Act. Contact dermatitis is not listed thereunder. Significantly, however, N.C. Gen. Stat. §97-53(13) provides additional compensability for other disease upon the showing of three elements: (1) that the disease is characteristic of persons engaged in a particular trade or occupation in which the claimant is engaged; (2) that the disease is not an ordinary disease of life to which the public is equally exposed; and (3) that there is a causal connection between the disease and the claimant's

employment. N.C. Gen. Stat. §97-53(13)(2001); *Jarvis v. Food Lion, Inc.*, 134 N.C. App. 363, 367, 517 S.E.2d 388, 391 (1999).

At the outset, we note that Mr. Hutson has only assigned error as to two of the Commission's findings--#11 and #12, which are more of the nature conclusions of law. In addition, we note that finding #13 is a mixed finding of fact and conclusion of law. The Commission's findings, to which Mr. Hutson has not excepted, are deemed proper, and are binding on this Court. *See Okwara v. Dillard Dep't Stores, Inc.*, 136 N.C. App. 587, 591, 525 S.E.2d 481, 484 (2000)("Where findings of fact are challenged on appeal, each contested finding of fact must be separately assigned as error, and the failure to do so results in a waiver of the right to challenge the sufficiency of the evidence to support the finding."). Accordingly, we must conclude the Commission's findings are supported by competent evidence. Therefore, this question on appeal is whether the Commission's findings support its conclusions of law that Mr. Hutson failed to meet his burden of showing that he contracted an occupational disease under N.C. Gen. Stat. §97-53(13), or that he has any disfigurement or scarring from his employment.

In this case, the Commission made the following pertinent findings of fact:

> 1. At the time of the hearing before the Deputy Commissioner, the plaintiff was thirty-one (31) years old and had experience with the insulation [sic] of hardwood floors.
>
> 2. The plaintiff was employed by defendant-employer in November 1997 and continued working for defendant-employer until December 1998.
>
> 3. The plaintiff alleges he had developed contact dermatitis as a result of exposure to certain chemicals used in the process of finishing hardwood floors.
>
> 4. The plaintiff presented to Douglas P. Shirley, M.D., Jacksonville Dermatology Clinic for an evaluation on February 26, 2001. Upon examination Dr. Shirley indicated plaintiff's hands

were clear. Dr. Shirley recommended a "patch test" to determine what allergies the plaintiff may have.

5. The patch test was given to the plaintiff on February 26, 2001 and the plaintiff was instructed to return in two (2) days for a final patch reading.

6. On February 28, 2001, Dr. Shirley noted that the plaintiff reacted positively to two (2) of the twenty-two (22) chemicals on the test. These chemicals were etheylenediamine dihydrochloride and cobalt bichloride [sic]. Dr. Shirley concluded that the plaintiff had contact dermatitis as a result of exposure to these chemicals. Dr. Shirley advised and educated the plaintiff about contact with these chemicals and directed the plaintiff not to come in contact with these chemicals.

7. Dr. Shirley indicated he had no evidence of scarring relating to the plaintiff's contact dermatitis.

8. Dr. Shirley had no opinion as to whether polyurethane used by defendant-employer contained either etheylenediamine dihydrochloride or cobalt bichloride [sic].

9. Dr. Shirley had no opinion about the plaintiff's ability to work and did not recall any kind of work excuse or restriction he placed on the plaintiff other than to avoid etheylenediamine dihydrochloride and cobalt bichloride [sic].

10. Dr. Shirley was not able to indicate that either of the two (2) chemicals to which the plaintiff is allergic is contained in products used by defendant-employer. Etheylenediamine dihydrochloride and cobalt bichloride [sic] and their derivatives are common elements that can be found in nickel-plated jewelry, buckles, Vitamin B-12, Skin Creams and antihistamines.

. . . .

13. Dr. Shirley indicated that the plaintiff's hands were clear at the time that he saw him which fails to support that plaintiff is entitled to any benefits for scarring or disfigurement. The plaintiff has failed to meet his burden to show a causal connection between the exposure to etheylenediamine dihydrochloride and cobalt bichloride [sic].

On this record, we conclude that the findings of fact and that factual portion of its mixed finding and conclusion, which are presumed proper, fully support the Commission's conclusions that Mr. Hutson failed to meet his burden of showing entitlement to workers' compensation benefits of an occupational disease and resultant scarring. Indeed, Findings of Fact Nos. 8-10 indicate there was not a causal connection between Mr. Hutson's contact dermatitis and his occupation. Finding of Fact No. 10 also indicates the public was equally exposed to the chemicals to which Mr. Hutson had an allergic reaction. Thus, anyone in the public could have a similar allergic reaction. Accordingly, the Full Commission did not err in denying Mr. Hutson workers' compensation benefits.

Mr. Hutson next argues that the Commission abused its discretion in denying his motion to reopen the record to allow additional evidence. N.C. Gen. Stat. §97-85 provides,

> [I]f application is made to the Commission within 15 days from the date when the notice of the award shall have been given, the Full Commission shall review the award, and, if good ground be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award[.]

N.C. Gen. Stat. §97-85 (2001). Whether to reopen a case for the taking of additional evidence is a question addressed to the discretion of the Commission, and its decision is reviewable only upon a showing of a manifest abuse of discretion. *Glynn v. Pepcom Indus., Inc.*, 122 N.C. App. 348, 355, 469 S.E.2d 588, 592 (1996).

The evidence of record tends to show that after a hearing before the deputy commissioner, the record was ordered to be held open sixty days so that Drs. Shirley and Reichling could be deposed and the parties could prepare their briefs. The deputy commissioner subsequently extended the time to complete these depositions and to submit briefs two times for a total of 78 days. However, when Mr. Hutson made a third request for an extension of time to

"complete taking of testimony," so that they could take additional testimony from Dr. Shirley and depose Dr. Reichling by telephone, the deputy commissioner denied the request. Mr. Hutson then filed a motion to re-open the record before the Full Commission. This motion was essentially requesting the same remedy previously sought from the deputy commissioner.

In light of the evidence that was already before the Commission, and the lengthy amount of time the record was held open so that Mr. Hutson could depose his experts and submit further evidence, we conclude that the Commission did not abuse its discretion in declining to re-open the record.

Having so concluded, we uphold the opinion and award of the Commission.

Affirmed.

Judges TYSON and STEELMAN concur.

Report per Rule 30(e).