A decision without a published opinion is authority only in the case in which such decision is rendered and should not be cited in any other case in any court for any other purpose, nor should any court consider any such decision for any purpose except in the case in which such decision is rendered. See Rule of Appellate Procedure 30 (e)(3).

NO. COA02-618

NORTH CAROLINA COURT OF APPEALS

Filed: 1 April 2003

CHARLES F. GIBSON,
Employee-Appellant,

v.

North Carolina Industrial Commission
I.C. File No. 916154

BILDON, INC.,
Employer-Appellee,

and

KEY RISK MANAGEMENT SERVICES COMPANY, INC.,
Carrier-Appellee

Appeal by plaintiff from Opinion and Award of the North Carolina Industrial Commission entered 18 January 2002. Heard in the Court of Appeals 12 March 2003.

George W. Moore, for employee-appellant.

Root & Root, P.L.L.C., by Louise Critz Root, for employer-appellee.

WYNN, Judge.

From an Opinion and Award of the North Carolina Industrial Commission denying his workers' compensation claim, employee, Charles F. Gibson, appeals. After carefully reviewing the record, we hold that "the [] Commission's findings of fact [are] conclusive on appeal" because competent evidence in the record supports those findings. *Adams v. AVX Corp.*, 349 N.C. 676, 682, 509 S.E.2d 411, 414 (1998). Furthermore, the Commission's findings of fact

support its conclusions of law. Therefore, we affirm the Opinion and Award of the full Commission.

On 14 December 1998, Mr. Gibson reported a job-related injury to his immediate supervisor, Gene Davis. The substance of this report was in controversy during the hearing below. Whereas Mr. Gibson testified that he consistently related his injury to a falling piece of metal, Mr. Davis, as well as other witnesses on record, testified that Mr. Gibson related his injury to lead exposure. This issue was potentially dispositive because Mr. Gibson tested negative for lead exposure; consequently, unless an accident or traumatic event precipitated his symptoms, his complaints did not arise in the course of employment for the purposes of the Workers' Compensation Act.

After hearing the evidence, the full Commission resolved the conflicting testimony in favor of the employer, Bildon, Inc. Most notably, the full Commission found that Mr. Gibson was not a credible witness, and that his injuries were the product of a degenerative process, rather than an accident associated with falling metal. The full Commission made the following pertinent findings of fact:

> 3. Plaintiff testified that on December 14, 1998, as he was working, a metal piece [weighing sixty pounds] started to fall from the table. He grabbed the piece with his right hand, catching it by the handle. As he did so, plaintiff felt as if the part "snatched" him. Plaintiff testified that he began to experience a headache and pain in his chest, arms, and neck.
>
> 4. Plaintiff's testimony is not credible in light of the medical history which plaintiff reported to his treating physicians at the time. Specifically, plaintiff reported shortness of breath and other respiratory symptoms, which he adamantly related to lead exposure at work. Only after all testing was reported as normal, and plaintiff was informed of the same, did he begin to claim that he was suffering from a neck condition, which he related to an alleged injury at work. . . .

5. On December 14, 1998, plaintiff reported having pain in his chest and arms to Gene Davis. However, plaintiff did not specifically tell Mr. Davis that a piece [of metal] had fallen and that in catching the piece, he had begun to experience pain.

6. Being concerned that plaintiff may have symptoms of lead exposure, the employer referred plaintiff to its doctor, Dr. John Lange . . . . At his initial visit on December 16, 1998, plaintiff reported a history to Dr. Lange of no episode of injury [from falling pieces of metal]. Plaintiff also described symptoms of headaches, chest pain, painful kidneys and feeling tired for one week. Plaintiff reported that these symptoms were due to lead exposure. Thereafter, on December 22, 1998, plaintiff returned to Dr. Lange, at which time he reported headache, shortness of breath and a fiery feeling in his lungs. . . . Plaintiff told Dr. Lange that his problems were from use or contact with lead. Based upon plaintiff's insistence, Dr. Lange formed the opinion that plaintiff fixated on the idea that he was suffering from lead exposure. Following testing, Dr. Lange found plaintiff was not suffering from lead exposure, and plaintiff was released from treatment as of January 11, 1999.

7. Dr. Lange found plaintiff capable of returning to unrestricted work as of December 28, 1998.

8. On January 8, 1999, plaintiff sought treatment with Dr. James Irion and Dr. Bon Webb . . . . Plaintiff reported having shortness of breath for three weeks.

9. On January 14, 1999, ... Plaintiff reported recurrent progressive respiratory symptoms, which he attributed to lead exposure at work. . . .

10. Plaintiff did not report a history of a jerking incident or attempting to catch a falling metal piece at work to Dr. Webb. Instead, plaintiff reported that he often worked in a posture with his back bent and neck flexed while performing his job. Dr. Webb diagnosed plaintiff with costochondritis, an inflammation of the area between the ribs and the sternum. Dr. Webb found plaintiff capable of returning to unrestricted work as of March 19, 1999.

11. On March 25, 1999, neurosurgeon Dr. Seyed Emadian . . . examined plaintiff, who reported experiencing pain while lifting a fifty pound object. Dr. Emadian found plaintiff capable of returning to unrestricted work at that time.

> 12. In approximately April of 1999, plaintiff told company president Jim Crafton about his pain originating from an incident when an object dropped. This was the first notice, which the employer received that plaintiff's symptoms were due to an accident rather than from an exposure to lead.
>
> . . . .
>
> 15. Despite being released to unrestricted duties, plaintiff has not sought to return to work in any capacity with defendant-employer since the alleged incident of December 14, 1998.
>
> 17. The greater weight of the evidence of record indicates that plaintiff's cervical spine condition was a result of [a] degenerative process in his neck and was not due to any alleged incident at work. Furthermore, the credible evidence of record fails to establish that plaintiff sustained an injury by accident or specific traumatic incident.

Based on these findings of fact, the full Commission concluded that Mr. Gibson "did not sustain an injury . . . arising out of and in the course of [his] employment" with employer-appellee. From this determination, and the aforementioned findings of fact, Mr. Gibson appeals.

"Under our Workers' Compensation Act, 'the Commission is the fact finding body.'" *Adams*, 349 N.C. at 680, 509 S.E.2d at 413 (quoting *Brewer v. Powers Trucking Co.*, 256 N.C. 175, 182, 123 S.E.2d 608, 613 (1962)). "'The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.'" *Adams*, 349 N.C. at 680, 509 S.E.2d at 413 (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)). The Commission's findings of fact "'are conclusive on appeal if supported by any competent evidence.'" *Adams,* 349 N.C. at 681, 509 S.E.2d at 414 (quoting *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977)). Thus, this Court is precluded from weighing the evidence on appeal; rather, we can do no more than "'determine whether the record contains any evidence tending to support the [challenged] finding.'" *Adams,* 349 N.C. at

681, 509 S.E.2d at 414 (quoting *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274). Moreover, even "where the evidence before the Commission is such as to permit either one of two contrary findings, the determination of the Commission is conclusive on appeal and the mere fact that an appellate court disagrees with the findings of the Commission is not grounds for reversal." *Morrison v. Burlington Industries*, 301 N.C. 226, 232, 271 S.E.2d 364, 367 (1981).

Mr. Gibson argues that the full Commission did not have competent evidence to make Findings of Fact 4, 6, 10, 11, 12, 14, 15, and 17. Admittedly, the evidence presented to the full Commission was conflicting. For instance, Mr. Gibson challenges the Commission's Finding of Fact 4 wherein the Commission found that Mr. Gibson's "testimony [was] not credible in light of the medical history [he] reported to his treating physicians at the time." Mr. Gibson argues this finding is contrary to the evidence because he "testified that he told his supervisor, Mr. Gene Davis, that he had a little accident and was having some difficulties as a result." Although this evidence was in the record, the Commission also had before it the testimony of Mr. Davis and Dr. Lange, wherein both witnesses testified that Mr. Gibson related his symptoms to lead exposure. As noted, even "where the evidence before the Commission is such as to permit either one of two contrary findings, the determination of the Commission is conclusive on appeal . . . ." *Morrison v. Burlington Industries*, 301 N.C. at 232, 271 S.E.2d at 367. Consequently, Mr. Gibson can not successfully challenge the Commission's findings of fact by merely pointing to contrary evidence in the record.

After reviewing Mr. Gibson's arguments in his brief, it is apparent that Mr. Gibson's arguments are without merit in light of our Supreme Court's holding in *Adams*. As noted, *Adams* held that the full Commission's findings of fact are *conclusive* on appeal if supported by *any* competent evidence *tending* to support the challenged finding. Although *Adams* endowed upon

the full Commission the power, on a cold record, to reverse findings of fact made by a Deputy Commissioner, it conversely limited this Court's review of the full Commission's findings of fact to whether there was *any* competent evidence *tending* to support them. *Adams v. AVX Corp.*, 349 N.C. at 681, 509 S.E.2d at 413 ("It is the Commission that ultimately determines credibility, whether from a cold record or from live testimony.").

In the case *sub judice*, the record is replete with competent evidence tending to support the Commission's challenged findings of fact. Moreover, these findings of fact, based upon competent evidence tending to support the challenged findings, support the Commission's conclusions of law. Accordingly, *Adams* mandates that we affirm the decision of the full Commission.

Affirmed.

Judges TIMMONS-GOODSON and LEVINSON concur.

Report per Rule 30(e).