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NO. COA03-837

NORTH CAROLINA COURT OF APPEALS

Filed: 1 June 2004

ANGELA FURR,  
Employee,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 923954

ANVIL KNITWEAR, INC.,  
Employer,

AIG CLAIMS SERVICES,  
Carrier,  
Defendants.

Appeal by defendants from opinion and award filed 25 February 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 19 April 2004.

*Bogle, Anthony & Leach, by William A. Anthony, III, for plaintiff-appellee.*

*Cranfill, Sumner & Hartzog, L.L.P., by J. Shannon Harris, for defendant-appellants.*

THORNBURG, Judge.

Anvil Knitwear Inc. (“employer”) and AIG Claims Services (“carrier”)(collectively “defendants”) appeal from an opinion and award filed 25 February 2003 by the North Carolina Industrial Commission (“the full Commission”) in favor of Angela Furr (“plaintiff”).

The evidence before the full Commission included the following: Plaintiff started working for employer in September 1997. On 26 March 1999, plaintiff was working in the finishing department of employer’s facility as a compact operator. This job required plaintiff to

lift rolls of cloth. Normally plaintiff lifted dry cloth, but on that date she lifted some wet cloth. Right after lifting the wet cloth, plaintiff went on break. She felt pain and stiffness in her back. Plaintiff attempted to work again after her break but still felt pain in her back. Plaintiff reported this pain to her supervisor.

Plaintiff was treated for a back strain at a hospital emergency room and by her doctor, Dr. Hogan. Plaintiff was referred to Dr. Oweida, who diagnosed plaintiff with thoracic outlet syndrome and performed surgery. Plaintiff also sought treatment from Dr. Evangelist. Dr. Evangelist diagnosed plaintiff with thoracic outlet syndrome and indicated that he believed with reasonable medical certainty that the lifting of the wet cloth caused or exacerbated plaintiff's condition. As of 26 September 2001, Dr. Evangelist was still treating plaintiff for back and shoulder pain stemming from the 26 March 1999 incident.

Following a hearing on 18 July 2001, a deputy commissioner of the Industrial Commission issued an opinion and award finding plaintiff sustained a compensable injury on 26 March 1999 and awarding plaintiff temporary disability compensation. On 25 February 2003, the full Commission filed an opinion and award affirming the deputy commissioner. Defendants appeal.

The standard of review for this Court in reviewing an appeal from the full Commission is limited to determining "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). Our review "'goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998)(citation omitted). Further, all evidence must be taken in the light most favorable to the plaintiff, and the

plaintiff “is entitled to the benefit of every reasonable inference to be drawn from the evidence.”

*Id.*

## I

Defendants present three arguments on appeal. Defendants argue first that the full Commission’s findings of fact are not supported by competent evidence of record. We disagree.

The full Commission made the following pertinent findings of fact:

3. Plaintiff testified that on March 26, 1999, while she was operating the compactor, “[t]here was some trim that was still wet, so I had to lift it from the table into a dryer box . . . .” Plaintiff testified that she did not often work with wet cloth. The cloth was wet due to a problem in the manufacturing process, possibly resulting from there being a “. . . crease in the material when it goes in the dryer, or if [it goes] through the dryer too fast . . . .” The wet cloth weighed more than the dry cloth that plaintiff normally lifted. Lifting wet cloth was not part of plaintiff’s usual work routine.

4. Plaintiff further testified that “right after” she had lifted the wet cloth, “I went on break. My back was stiff and it was hurting.”

5. Plaintiff continued to work. Later the same day, plaintiff reported to her supervisor that she was experiencing back pain. She finished her work day and went home.

6. The next day, plaintiff was experiencing pain. She reported to work, but was in significant pain after several hours. Plaintiff reported the pain to her supervisor and requested that she be allowed to go to the emergency room. Anvil Knitwear, Inc. filed a Form 19 that states “employee alleges as she was running her compactor/during day back began to ache.” The Form 19 shows a date of injury of March 26, 1999 and states that the location of the injury was “strain upper back area (thoracic area).”

. . . .

11. Upon referral by Dr. Oweida, plaintiff also began treating with Dr. Felix Evangelist, a specialist in thoracic surgery, on May 27, 1999. In his thirty years of medical practice in North Carolina, Dr. Evangelist has treated numerous patients for thoracic outlet syndrome. Dr. Evangelist concurred with Dr. Oweida’s

diagnosis of thoracic outlet syndrome, and stated in his deposition that the syndrome is attributed to a constriction of muscles located around the thoracic outlet, which spasm and squeeze the arteries and nerves running out to the arm, producing pain, numbness, tingling, and headaches. According to Dr. Evangelist, thoracic outlet syndrome is often precipitated by a minor injury, often to the back, chest, or shoulder. Following her surgery on February 4, 2000, plaintiff has continued to treat with Dr. Evangelist for pain symptoms associated with thoracic outlet syndrome.

12. Dr. Evangelist opined, and the Full Commission finds as fact, to a reasonable degree of medical certainty, that the work-related incident on March 26, 1999, caused thoracic outlet syndrome in the plaintiff.

13. Dr. Michael Andrew Cowan, a general neurosurgeon, examined plaintiff for an IME on August 29, 2001. Dr. Cowan opined that plaintiff's history and examination were most consistent with a back and shoulder strain. Although Dr. Cowan admittedly does not specialize in the treatment of thoracic outlet syndrome, the Full Commission finds his opinion regarding plaintiff's back strain to be credible and consistent with the opinions of Drs. Oweida and Evangelist.

14. Plaintiff sustained an injury to her back as a consequence of a specific traumatic incident arising out of and in the course of her employment on March 26, 1999.

15. The greater weight of the competent medical evidence of record establishes that plaintiff suffers from thoracic outlet syndrome caused or aggravated by the specific traumatic incident at work on March 26, 1999.

16. Plaintiff was temporarily totally disabled from April 6, 1999, to December 1, 1999, when she returned to light duty work as a receptionist. In addition, plaintiff was temporarily totally disabled due to her surgery from February 4, 2000, to March 14, 2000, when she again returned to light duty work as a receptionist. Plaintiff earns less money in the light duty job because she does not work overtime as she had before her injury.

We have carefully reviewed the record and conclude that each of these findings is supported by competent evidence. The findings are supported by plaintiff's testimony, the medical records included in the record on appeal, and the depositions of Dr. Evangelist and Dr.

Cowan. The record contains evidence of plaintiff's treatment at the emergency room for back strain, as well as North Carolina Industrial Commission forms indicating that plaintiff strained her back while at work on 26 March 1999. In addition, both the medical records and depositions indicate that plaintiff injured her back while lifting wet cloth, and that she was diagnosed with back and shoulder strains and thoracic outlet syndrome. Thus, there is competent evidence to support the above findings of fact.

Defendants also assert that because the thoracic outlet is in the area of the shoulder rather than the back, the full Commission erred by finding that plaintiff suffered a compensable injury to her back. This Court addressed a similar situation in *Ruffin v. Compass Group USA*, 150 N.C. App. 480, 563 S.E.2d 633 (2002), and held that the manifestation of symptoms in plaintiff's neck and shoulder resulting from a back injury did not defeat plaintiff's claim of a compensable back injury. *Id.* at 485, 563 S.E.2d at 637. Further, an injury is compensable as long as "it is fairly traceable to the employment' or 'any reasonable relationship to the employment exists.'" *Rivera v. Trapp*, 135 N.C. App. 296, 301, 519 S.E.2d 777, 780 (1999) (citations omitted).

What the evidence tends to show is that plaintiff strained her back lifting wet cloth at work. This back injury provoked thoracic outlet syndrome with symptoms of back, chest, shoulder, and arm pain. Plaintiff reported the back pain to her supervisor and to several physicians. Dr. Cowan indicated that plaintiff had suffered a back or shoulder strain. Dr. Hogan treated plaintiff for a back strain. Both Dr. Oweida and Dr. Evangelist diagnosed plaintiff with thoracic outlet syndrome as a result of plaintiff's history of straining her back at work, plaintiff's physical examination, and other test results. Dr. Evangelist explained in his deposition that thoracic outlet syndrome is commonly triggered by injuries to the back. As the record contains competent evidence to support the above findings of fact, this assignment of error is overruled.

## II

Defendants' second argument asserts that the full Commission's conclusions of law are not supported by competent findings of fact or the applicable law. On appeal, defendants specifically attack the Commission's conclusion of law that "[p]laintiff sustained an injury as a result of a specific traumatic accident arising out of and in the course of her employment on March 26, 1999." In this argument defendants again assert that no evidence supports the conclusion that plaintiff sustained a back injury. As with defendants' first argument, this argument fails due to the plethora of competent evidence indicating plaintiff strained her back lifting wet cloth, thus causing the symptoms associated with thoracic outlet syndrome. Accordingly, this assignment of error is overruled.

## III

Defendants' final argument asserts that the full Commission erred in finding a causal relationship between the lifting incident alleged by plaintiff and plaintiff's thoracic outlet syndrome. In a workers' compensation case, the plaintiff has the burden of proving causation. *Whitfield v. Lab. Corp. of Am.*, 158 N.C. App. 341, 350, 581 S.E.2d 778, 784 (2003). Where the nature of the injury alleged involves complicated medical questions, only an expert can give competent evidence as to causation. *Click v. Pilot Freight Carriers*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980).

In the present case, the full Commission made the following findings of fact in reference to causation:

11. Upon referral by Dr. Oweida, plaintiff also began treating with Dr. Felix Evangelist, a specialist in thoracic surgery, on May 27, 1999. In his thirty years of medical practice in North Carolina, Dr. Evangelist has treated numerous patients for thoracic outlet syndrome. Dr. Evangelist concurred with Dr. Oweida's diagnosis of thoracic outlet syndrome, and stated in his deposition

that the syndrome is attributed to a constriction of muscles located around the thoracic outlet, which spasm and squeeze the arteries and nerves running out to the arm, producing pain, numbness, tingling, and headaches. According to Dr. Evangelist, thoracic outlet syndrome is often precipitated by a minor injury, often to the back, chest, or shoulder. Following her surgery on February 4, 2000, plaintiff has continued to treat with Dr. Evangelist for pain symptoms associated with thoracic outlet syndrome.

12. Dr. Evangelist opined, and the Full Commission finds as fact, to a reasonable degree of medical certainty, that the work-related incident on March 26, 1999, caused thoracic outlet syndrome in the plaintiff.

13. Dr. Michael Andrew Cowan, a general neurosurgeon, examined plaintiff for an IME on August 29, 2001. Dr. Cowan opined that plaintiff's history and examination were most consistent with a back and shoulder strain. Although Dr. Cowan admittedly does not specialize in the treatment of thoracic outlet syndrome, the Full Commission finds his opinion regarding plaintiff's back strain to be credible and consistent with the opinions of Drs. Oweida and Evangelist.

14. Plaintiff sustained an injury to her back as a consequence of a specific traumatic incident arising out of and in the course of her employment on March 26, 1999.

15. The greater weight of the competent medical evidence of record establishes that plaintiff suffers from thoracic outlet syndrome caused or aggravated by the specific traumatic incident at work on March 26, 1999.

Based on these findings of fact, the full Commission concluded as a matter of law as follows:

1. Plaintiff sustained an injury as a result of a specific traumatic incident arising out of and in the course of her employment on March 26, 1999. N.C. Gen. Stat. . 97-2(6). The greater weight of the evidence of record establishes that such incident caused injury to plaintiff's back. . . .

2. The greater weight of the evidence of record establishes a causal relationship between plaintiff's injury to her back on March 26, 1999, as a result of a specific traumatic incident, and her condition of thoracic outlet syndrome. Back

injuries frequently manifest pain in other areas of the body. N.C. Gen. Stat. . 97-2(6).

We have carefully reviewed the record, depositions, and transcript and determine that competent evidence supports the findings of fact, which in turn support the conclusions of law.

Dr. Evangelist, in his deposition, indicated that plaintiff suffers from thoracic outlet syndrome. He further indicated that he believed with reasonable medical certainty that plaintiff's thoracic outlet syndrome was caused by her lifting of the wet cloth on 26 March 1999. Defendants assert that this testimony is not competent evidence in that Dr. Evangelist improperly based his causation opinion on "*post hoc, ergo propter hoc*" or "after this, therefore because of this" reasoning. See *Young v. Hickory Bus. Furniture*, 353 N.C. 227, 232, 538 S.E.2d 912, 916 (2000).

In *Young* our Supreme Court emphasized that in order to be competent testimony on medical causation, an expert's testimony must be based on more than mere speculation and conjecture. *Id.* at 230, 538 S.E.2d at 915. The Court held that "where the threshold question is the cause of a controversial medical condition, the maxim of '*post hoc, ergo propter hoc*,' is not competent evidence of causation." *Id.* at 232, 538 S.E.2d at 916. In *Young* the plaintiff was diagnosed with fibromyalgia. Evidence was presented that fibromyalgia occurs for unknown reasons and cannot be objectively studied. The diagnosing physician admitted he had not tested plaintiff for other possible causes of fibromyalgia, which were specific to that plaintiff's history. The record in that case supported "at least three potential causes of fibromyalgia in Ms. Young other than her injury in 1992." *Id.*

The evidence presented on the causation issue in the instant case primarily centers on the deposition and records of Dr. Evangelist. In his deposition Dr. Evangelist testified that plaintiff had told him about lifting the wet cloth at work on 26 March 1999. Dr. Evangelist also related



that plaintiff told him that after lifting the wet cloth she felt a strain in her back with radiating pain. After taking plaintiff's history and performing several tests, Dr. Evangelist diagnosed plaintiff as likely suffering from thoracic outlet syndrome. This diagnosis is also reflected in the records of plaintiff's visits to Dr. Evangelist's office. At the deposition, plaintiff's attorney asked Dr. Evangelist the following: "And how about causation? Do you believe, to a reasonable degree of medical certainty in your field, that this incident at work on 3/26/99 caused her thoracic outlet syndrome?" Dr. Evangelist responded, "[w]ell, I don't believe. I'm certain she -\_ she had nothing wrong before that and that she's been a disaster ever since."

Although Dr. Evangelist referred to the temporal relationship between plaintiff's lifting incident and the appearance of her symptoms, this statement does not stand alone in his testimony. Dr. Evangelist indicated that he based his diagnosis on years of experience treating hundreds of patients with thoracic outlet syndrome, results of diagnostic tests and procedures, and his evaluation of plaintiff's history. His thorough study of plaintiff's history did not uncover any other probable causes of her thoracic outlet syndrome. Further, Dr. Evangelist saw plaintiff and diagnosed her with thoracic outlet syndrome only several months after her initial injury.

In sum, Dr. Evangelist "unequivocally demonstrated his ability to express an opinion to a reasonable degree of medical certainty" as to what caused plaintiff's thoracic outlet syndrome. *Norton v. Waste Management Inc.*, 146 N.C. App. 409, 416, 552 S.E.2d 702, 707 (2001). Thus, we find that this evidence satisfies our Supreme Court's holding in *Young*, that an expert's evidence on causation be based on more than mere speculation and conjecture. Therefore, the full Commissions's findings of fact and conclusions of law on causation are supported by competent evidence. This assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e).