

*An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.*

NO. COA03-434

NORTH CAROLINA COURT OF APPEALS

Filed: 6 April 2004

WILLIE BULLOCK,  
Employee,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 934263

HEADWAY CORPORATE STAFFING  
SERVICE,  
Employer,

ATLANTIC MUTUAL INSURANCE  
COMPANY,  
Carrier,  
Defendants.

Appeal by defendants from opinion and award of the North Carolina Industrial Commission entered 27 November 2002 by Commissioner Dianne C. Sellers. Heard in the Court of Appeals 24 February 2004.

*Rothrock Law Firm, P.A., by Kenneth P. Rothrock, for plaintiff-appellee.*

*Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Jeffrey A. Doyle and Jennifer S. Jerzak, for defendants-appellants.*

TYSON, Judge.

Headway Corporate Staffing Service and Atlantic Mutual Insurance Company (collectively, “defendants”) appeal from the opinion and award of the Full Commission of the North Carolina Industrial Commission (“Commission”). We affirm.

## I. Background

On 25 April 1999, Willie Bullock (“plaintiff”) was employed by defendants. On that day, plaintiff was struck in the head by several pieces of wood molding, and fell unconscious onto the ground. Witnesses at the scene stated that after plaintiff regained consciousness, he was shaking and exhibiting seizure-like behavior. Plaintiff was taken to Pitt County Hospital and diagnosed with a closed head injury. The following day, plaintiff was unresponsive to deep pain and engaged in lip-smacking motions consistent with seizure activity. Plaintiff was diagnosed as having a seizure.

Dr. Donald Price of East Carolina Neurology (“Dr. Price”) began seeing plaintiff as a regular patient after plaintiff’s release from the hospital on 10 May 1999. Dr. Price diagnosed plaintiff with idiopathic epileptic seizures, but was unable to determine whether or not the accident of 25 April 1999 was the cause of these seizures. On 22 June 1999, Dr. Price remained unsure of the cause of the seizures. He did, however, rule out causes other than the head injury, such as brain tumors. Dr. Price also testified that head trauma could cause epilepsy. On 14 July 1999, Dr. Price treated plaintiff, recommended to him not drive a vehicle or operate heavy machinery, but made no recommendation regarding attendant care for plaintiff.

From 10 August 1999 to 7 August 2000, plaintiff was treated by Dr. Karen Smith (“Dr. Smith”), a family physician. Dr. Smith noted that plaintiff’s medical history did not include seizure activity. After treating plaintiff for nearly a year, Dr. Smith opined that plaintiff’s current seizure activity was related to the April 25th accident. She noted that plaintiff’s seizures could be triggered if he fell, experienced alterations in his blood pressure, or took his medications inappropriately. Dr. Smith testified that plaintiff needed assistance preparing meals, taking medication, and running errands. She also advised plaintiff not to drive a motor vehicle.

On 27 October 2000, plaintiff returned to Dr. Price. Dr. Price observed that plaintiff's neurologic exam had changed very little since the time of his accident. Dr. Price did note that plaintiff was manifesting abnormal behavior. Dr. Price referred plaintiff to his partner, Dr. Richard Daves ("Dr. Daves"), for a neuropsychological evaluation on 11 November 2000. Dr. Daves concluded that plaintiff operated at a low level of mental functioning and that plaintiff exhibited bizarre behavior.

On 14 December 2000, plaintiff again consulted Dr. Price. Plaintiff's sister, Lena Bullock ("Lena"), reported that plaintiff had been hallucinating. Dr. Price became concerned that plaintiff could be suffering from schizophrenia, but did not relate schizophrenia or the seizures to the April 25th accident. Dr. Price found that plaintiff's injuries suffered in the accident were minor and insufficient to cause mental problems and seizures.

On 25 July 2001, plaintiff underwent a neurology evaluation with Dr. Aatif Husain ("Dr. Husain") of the Duke University Medical Center, Division of Neurology. Dr. Husain found that plaintiff was suffering from complex partial seizures and cognitive impairment. He recommended that plaintiff remain on medication prescribed by Dr. Price.

Plaintiff last saw Dr. Price on 14 June 2002. Dr. Price did not find significant changes in plaintiff's condition. Dr. Price stated that plaintiff may need attendant care to make certain that he was taking his medication.

Lena testified for plaintiff and stated that he had been living with her since the accident and that she was taking care of him, while also working full-time. Lena administered plaintiff's medications in the morning, at night, and on her lunch breaks. Lena stated that if she was unable to attend to plaintiff, another family member would substitute.

On 8 September 2000, plaintiff requested of defendants to pay for attendant care services, predominantly provided by Lena. Plaintiff asserted that he is unable to drive, take his medications appropriately, or cook for himself. Deputy Commissioner Edward Garner, Jr., found that plaintiff's seizure activity was caused by the April 25th accident and ordered defendants to provide twenty-four hour attendant care to plaintiff. The Full Commission upheld the Deputy Commissioner's order with modifications on 27 November 2002. The Full Commission found that "[p]laintiff is entitled to 16 hours of attendant care per day, seven days a week, to be paid at a rate of pay of an unskilled caregiver in plaintiff's geographic location for all attendant care provided since September 8, 2000 and continuing." Defendants appeal.

## II. Issues

The issues are whether the Commission erred in: (1) finding that plaintiff's seizure disorder was caused by the April 25th injury, (2) finding that plaintiff's injuries required sixteen hours per day of attendant care, and (3) awarding plaintiff sixteen hours per day of attendant care for his injuries.

## III. Seizure Disorder

Defendants contend that the Commission erred in finding that plaintiff's seizure disorder was related to the April 25th injury. We disagree.

In reviewing a decision of the Commission, an appellate court is limited to a consideration of whether 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). Findings of fact are conclusive upon appeal if supported by competent evidence, even though other evidence would support contrary findings. *Pittman v. International Paper Co.*, 132 N.C. App. 151, 156, 510 S.E.2d 705, 709

(1999) (citing *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997)).

Defendants argue that the Commission did not weigh and consider Dr. Price's testimony. The Commission specifically refers to Dr. Price's and Dr. Smith's testimony when it determined whether plaintiff's seizures were caused by the April 25th accident. Dr. Smith examined plaintiff for over a year after the accident. After talking to Lena and plaintiff and reviewing all the files on plaintiff's medical history, including the lack of prior seizure activity, Dr. Smith testified that plaintiff's seizure disorder was caused by the April 25th accident. Dr. Price also testified that head trauma could cause the type of epilepsy associated with plaintiff, although he did not feel like plaintiff's accident was severe enough to be the cause of his seizures.

The Commission is the sole judge of the credibility of witnesses and the weight of the evidence. *Counts v. Black & Decker Corp.*, 121 N.C. App. 387, 389, 465 S.E.2d 343, 345 (1996) (citing *Watkins v. City of Asheville*, 99 N.C. App. 302, 392 S.E.2d 754, *disc. rev. denied*, 327 N.C. 488, 397 S.E.2d 238 (1990)). The Commission's reliance on the testimony of Dr. Smith is competent evidence supporting the Commission's finding of fact that plaintiff's seizure disorder was caused by the April 25th accident. Defendants' assignment of error is overruled.

#### IV. Attendant Care

Defendants contend that the Commission erred in finding that plaintiff's seizure disorder required sixteen hours per day of attendant care and in awarding plaintiff attendant this amount of care. We discuss these assignments of error together.

Dr. Smith testified that plaintiff needed someone to be with him twenty-four hours a day in case he had relapses in his seizures. Dr. Smith testified that plaintiff needed help preparing meals and required a low salt diet to maintain proper blood pressure. She testified that an

increase in blood pressure could cause a relapse in seizures. She felt that plaintiff could not maintain his diet alone and that he was at risk of hurting himself by operating a stove. Further, Lena testified that plaintiff would start cooking and forget about the stove due to his condition. Plaintiff would leave the food cooking on the stove until it burned and “smoked up” the house.

Dr. Smith also testified that plaintiff should not operate a motor vehicle due to his seizures and that he needed help to run errands and to shop. Plaintiff needed someone to take him to his doctor appointments and was unable to remember necessary documents and information. Both Dr. Smith and Dr. Price testified plaintiff needed help to sort out and administer his medications and that he was unable to do this on his own. Lena testified that plaintiff was prescribed numerous medications and that the drugs had to be sorted out and taken separately with food. She stated that plaintiff would take all the medications at once unless they were pre-separated. Dr. Smith testified that a failure to take doses of medications could result in seizures and that plaintiff is likely to fall and injure himself rendering him helpless unless someone is with him at all times.

Lena further testified that she had been caring for plaintiff since the accident and continues to work full-time. She stated that her sister, plaintiff’s ex-girlfriend, and whoever else she could “get her hand on” would go over and stay with plaintiff when she was unable. All attendants made sure plaintiff was taking his medications correctly.

The Commission’s finding of fact and conclusion of law awarding plaintiff sixteen hours per day of attendant care is supported by competent evidence. Defendants’ assignments of error are overruled.

## V. Conclusion

The Commission's findings of fact and conclusions of law concerning plaintiff's seizure disorder and whether attendant care is required are supported by competent evidence in the record. The opinion and award of the Commission is affirmed.

Affirmed.

Judges WYNN and MCGEE concur.

Report per Rule 30(e).