NO. COA02-1282

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2003

SHIRLEY HARRIS,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 948387

BARBOUR THREADS, INC.,
Employer-Defendant,

and

KEMPER INSURANCE COMPANY,
Carrier-Defendant.

Appeal by defendant from Opinion and Award of the North Carolina Industrial Commission entered 14 June 2002. Heard in the Court of Appeals 15 September 2003.

Ganly, Ramer & Strom, by Thomas F. Ramer, for plaintiff-appellee.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by W. Kevin McLaughlin, for defendant-appellants.

EAGLES, Chief Judge.

Defendants appeal from an Opinion and Award of the full Industrial Commission awarding workers' compensation benefits to plaintiff.

The record tends to establish the following: At the time of her injury, plaintiff was 59 years old and had been employed in the throwing department of defendant's Hendersonville plant for approximately fourteen years. From 1996 to 1999, plaintiff worked as the lead person in

the throwing department. Plaintiff's primary job was to oversee the operation of thread processing machines.

Part of plaintiff's job required her to load spools of raw, unprocessed thread onto the processing machines, a procedure called "creeling." Each machine held 86 spools of raw thread. On average, each spool of raw thread weighed between three and one-half to four pounds and was approximately fifteen inches in length. Depending upon the type of thread used, however, some spools could weigh as much as ten or twenty pounds each. The thread itself was wound around a metal tube called a "perm," which protruded approximately one inch beyond the end of the thread and was approximately three to five inches in diameter. "Creeling" consisted of plaintiff removing the empty perm from the machine; grasping the full perm between the thumb and index finger of her right hand so that she did not touch the thread; raising the spool to approximately eye level and placing it on the machine with her arms fully extended in front of her. Once all 86 tubes had been replaced, a process which took approximately twenty minutes to complete, plaintiff laced the thread through and restarted the machine. When the machine was operating smoothly, plaintiff moved to another machine and repeated the loading procedure.

Plaintiff was also required to unload the spools of finished thread from the machines she had previously loaded, a procedure called "doffing." Each machine held "ninety-six" spools of finished thread. On average, each spool of finished thread weighed between three and one-half to ten pounds. Plaintiff unloaded the machines in much the same way she loaded them, by reaching out at eye level and grasping the perm with her right hand, lifting it from the machine and unlacing the thread with her left hand.

Plaintiff worked 12 hour shifts, averaging 43 hours per week. During a typical 12 hour shift, plaintiff would load a machine approximately three to four times; plaintiff would unload a

machine as many as five times per shift. Plaintiff was allowed four 15 minute breaks and one 30 minute meal break per shift. Apart from these breaks, plaintiff "continuously" loaded and unloaded thread from her machines.

In 1998, plaintiff began complaining of pain in her neck and lower back, as well as swelling and weakness in her right arm and hands. From June 1998 to June 2000, plaintiff was examined by seven separate physicians and was ultimately diagnosed with mild carpel tunnel syndrome, cervical spondylosis and myofascial pain syndrome. Plaintiff filed a notice of injury with defendant seeking workers' compensation benefits, but defendant denied compensability. Both the Deputy Commissioner and the full Commission concluded that plaintiff had suffered a compensable occupational disease and awarded plaintiff workers' compensation benefits. Defendant appeals.

The sole issue presented by this appeal is whether the evidence before the Industrial Commission was sufficient, as a matter of law, to support its findings and conclusion that plaintiff's disease was causally related to her employment.

At the outset, we note that our review of appeals from the Industrial Commission is limited to determination of "(1) whether there was any competent evidence before the Commission to support its findings of fact; and (2) whether the Commission's findings of fact justify its legal conclusions and decision." *Sanderson v. Northeast Constr. Co.*, 77 N.C. App. 117, 120-21, 334 S.E.2d 392, 394 (1985). The Commission's findings of fact are conclusive on appeal if they are supported by any competent evidence, even where there is evidence that would support a finding to the contrary. *Id.* at 121, 334 S.E.2d at 394.

In order to prove the existence of a compensable occupational disease, a claimant must establish three elements:

> (1) the disease must be characteristic of a trade or occupation, (2) the disease is not an ordinary disease of life to which the public is equally exposed outside of the employment, and (3) there must be proof of causation, i.e., proof of a causal connection between the disease and the employment.

Hansel v. Sherman Textiles, 304 N.C. 44, 52, 283 S.E.2d 101, 106 (1981). "[W]here the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Click v. Freight Carriers*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980). However, where the expert's opinion is based upon a hypothetical question that required the expert to assume the truth of facts that the record fails to support, it is incompetent to support the Commission's finding that plaintiff's injury was causally related to his employment. *Thacker v. City of Winston-Salem*, 125 N.C. App. 671, 675, 482 S.E.2d 20, 23, *disc. review denied*, 346 N.C. 289, 487 S.E.2d 571 (1997).

During the hearing, the Commission received the deposition testimony of four of plaintiff's physicians. Two of plaintiff's physicians, Dr. Andrew Rudins and Dr. Eric Rhoton, were asked to render an opinion as to whether plaintiff's diseases were causally related to her employment. Prior to giving his opinion, plaintiff's counsel asked Dr. Rudins to assume the following:

> If the evidence were to be found by the Industrial Commission that Miss Harris' job required her -- her job was listed as a lead throwing -- or throwing lead person; that her job required her to reach and grasp spools of thread that were fourteen inches long by three inches wide where she would have to reach and grasp between her thumb and her fingers these spools, which weigh three and half [sic] to four pounds; that she would then grasp those, reach with her arms outstretched and place those on guides on machines, the machine having eighty-six such holders that are approximately at eye level;

> That she did that along with reaching up and replacing empty spools or tubes; and that in replacing the empty spools they might weigh as much as ten to twenty pounds;
>
> And that when she wasn't doing those two activities, she was unloading wound thread with the same length of tubes, but these spools weighed three and a half to ten pounds;
>
> And that she performed these types of activities for a twelve hour day where she had four fifteen minute breaks and one thirty minute dinner break.

Based on these assumptions, Dr. Rudins opined that plaintiff's job duties would place her at an "increased risk of developing" and "would be a significant contributing factor" to the diseases with which she had been diagnosed. Dr. Rhoton rendered a similar opinion in response to a similar factual scenario. After finding facts consistent with those posed to Drs. Rudins and Rhoton, the Industrial Commission found and concluded that the "competent evidence in the record supports a finding that plaintiff's carpal tunnel syndrome and myofascial pain syndrome . . . were caused or significantly aggravated by plaintiff's job duties . . . ."

Defendant argues that this case is identical to and controlled by Thacker. Specifically, defendant argues that the opinions of both Dr. Rhudins and Dr. Rhoton were based upon hypothetical facts that were unsupported by any evidence in the record. In support, defendant directs this Court to the testimony of Violet Louise Brooks, a former employee of defendant and co-worker of plaintiff. During cross examination, Ms. Brooks testified as follows:

> Q: Okay. Well, in general -- and I realize it varies from day-to-day, but ---
>
> A: Right.
>
> Q: --- in general, how much time or what percentage of the day would you spend doffing or creeling?
>
> A: At least fifty percent of the day a lot of time. I mean we went continuously.

Defendant argues that this testimony supports a finding that plaintiff performed doffing and creeling tasks for, at most, one- half of her workday which translates into approximately six hours. Since the opinions of both Dr. Rhudins and Dr. Rhoton were based upon ten and one-half hours of doffing and creeling per day, defendant argues they were based upon hypothetical facts that were unsupported by any evidence in the record. We disagree.

Contrary to defendant's assertion, the facts of this case are distinguishable from those in Thacker. In Thacker, the witness was asked to render an opinion based on the assumption that plaintiff was thrown head-first into the roof of the car he was driving upon impact, a fact for which there was no evidentiary support. 125 N.C. App. at 675-76, 482 S.E.2d at 23. Here, unlike Thacker, plaintiff's testimony directly supported each fact that Drs. Rudins and Rhoton were asked to assume in rendering their opinions. Moreover, the Commission made detailed findings of fact that were consistent with both plaintiff's testimony and the facts presented to Drs. Rudins and Rhoton. It is immaterial here that Ms. Brooks' testimony could have supported findings to the contrary. Since there is competent evidence in the record to support the Commission's findings with respect to the hours worked by plaintiff and the duties she performed, their findings are conclusive on appeal. Accordingly, this assignment of error is overruled.

We hold that there is competent evidence in the record to support the Industrial Commission's findings of fact, and that these findings justify its legal conclusions and decision. Accordingly, the Opinion and Award of the Industrial Commission is affirmed.

Affirmed.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).