

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-1085

NORTH CAROLINA COURT OF APPEALS

Filed: 17 June 2003

RUTHETTA COFFMAN ECHOLS,
Employee,
Plaintiff-Appellant,

v.

North Carolina Industrial Commission
I.C. File No. 953018

GRANVILLE MEDICAL MANAGEMENT,
INC.,
Employer,

N.C. FARM BUREAU MUTUAL
INSURANCE COMPANY,
Carrier,
Defendants-Appellees.

Appeal by plaintiff from an opinion and award entered 20 March 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 15 May 2002.

Davis, Murrelle & Lyles, P.A., by Janet M. Lyles, for plaintiff-appellant.

Lewis & Roberts, P.L.L.C., by Richard M. Lewis and Jeffrey A. Misenheimer, for defendants-appellees.
McGEE, Judge.

Ruthetta Coffman Echols (plaintiff) appeals from an opinion and award of the Industrial Commission denying her claim for workers' compensation benefits. Plaintiff was employed as a physician's assistant by Granville Medical Management, Inc. (employer) under a one-year contract beginning 13 July 1998. Plaintiff worked at the Swansboro Medical Center and at the Emerald Isle Primary Care Clinic, both of which were owned by employer. Plaintiff was working

at the Emerald Isle Primary Care Clinic on 15 August 1998 when she received a telephone call from Lynn Riggs (Ms. Riggs) around 5:00 p.m. Ms. Riggs asked plaintiff to come by her house to look at Mr. Riggs' hand because he had cut it while working in the garage earlier that day. The Riggs were neighbors of plaintiff and were also patients of employer. Plaintiff agreed to stop by the Riggs' house on her way home.

While traveling to the Riggs' house, plaintiff was involved in an automobile collision when her vehicle was rear-ended. She stated she did not experience any pain or discomfort immediately following the accident and she believed she was not injured. Following the collision, plaintiff went to the Riggs' house where she examined, cleaned, and bandaged Mr. Riggs' hand. Plaintiff then drove home. Later that evening, she suffered pain in her leg and back.

Plaintiff began physical therapy on 20 August 1998 and underwent physical therapy three times a week until July 1999. She received treatment from several medical providers and was placed on restricted work duty. Plaintiff worked full-time until 24 June 1999. She worked approximately twenty-four to thirty hours a week thereafter until her employment contract expired on 11 July 1999.

On 9 August 1999, plaintiff filed a Form 18 seeking workers' compensation due to injuries she sustained in an automobile collision while in the course and scope of her employment. Granville Medical Management, Inc. and N.C. Farm Bureau Mutual Insurance Company (defendants) filed a Form 61 denying plaintiff's workers' compensation claim on 24 August 1999. Plaintiff filed a Form 33 request for hearing dated 22 March 2000 because of defendants' failure to recognize plaintiff's workers' compensation claim. Defendants filed a Form 33R dated 20 April 2000 denying that plaintiff's alleged injury occurred in the course and

scope of her employment and contending that plaintiff failed to timely report her alleged injury pursuant to N.C. Gen. Stat. §97-22.

Plaintiff's claim was heard on 5 February 2001 by a deputy commissioner who concluded in an opinion and award filed on 23 May 2001 that plaintiff had sustained an injury within the course and scope of her employment and was entitled to receive workers' compensation benefits as a result. The deputy commissioner awarded plaintiff partial disability benefits in the amount of \$532.00 per week for the periods of work she missed as a result of her injuries. The deputy commissioner also awarded plaintiff payment of past and future medical expenses incurred for treatment of the sustained injuries. Defendants appealed the award to the Full Commission. The Industrial Commission rejected the conclusions of the deputy commissioner and denied plaintiff's claim. The Industrial Commission found that "[p]laintiff submitted her medical bills following the 15 August 1998 accident to group insurance and did not allege her condition was work-related until almost a year after the accident." The Industrial Commission concluded that "[p]laintiff did not provide written notice of the alleged injury by accident to defendant-employer within 30 days of the alleged injury's occurrence. Further, plaintiff did not have any reasonable excuse for not giving such notice. N.C.G.S. 97-22." Plaintiff appeals.

Plaintiff argues the Industrial Commission erred in concluding that plaintiff failed to give her employer notice of her work-related injury in accordance with the notice requirements of N.C. Gen. Stat. §97-22, which states:

Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this Article prior to the giving of such notice, unless it can be shown that the employer, his agent or representative, had knowledge of the accident, or that the party

required to give such notice had been prevented from doing so by reason of physical or mental incapacity, or the fraud or deceit of some third person; but no compensation shall be payable unless such written notice is given within 30 days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

N.C. Gen. Stat. §97-22 (2001). The purpose of the notice requirement is to allow “the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury and [to] facilitate[] the earliest possible investigation of the circumstances surrounding the injury.” *Booker v. Medical Center*, 297 N.C. 458, 481, 256 S.E.2d 189, 204 (1979).

Our review of the Commission’s order is limited to determining (1) whether the Commission’s findings of fact are supported by the evidence, and (2) whether the findings of fact justify the Commission’s legal conclusions. The findings of fact are conclusive on appeal if supported by competent evidence. This is so even though there is evidence which would support findings to the contrary. . . . We may set aside findings of fact only on the ground that they lack evidentiary support. We cannot weigh the evidence but can only determine whether the record contains *any* competent evidence tending to support the findings.

Dean v. Cone Mills Corp., 83 N.C. App. 273, 275-76, 350 S.E.2d 99, 100 (1986) (citations omitted), *aff’d*, 319 N.C. 457, 355 S.E.2d 136 (1987). The Industrial Commission may not completely ignore competent evidence and must evaluate all evidence before it is rejected. *Jarvis v. Food Lion, Inc.*, 134 N.C. App. 363, 366-67, 517 S.E.2d 388, 391, *disc. review denied*, 351 N.C. 356, 541 S.E.2d 139 (1999). Weighing the testimony and credibility of witnesses is in the sole discretion of the Industrial Commission. *Id.* at 366, 517 S.E.2d at 390.

Plaintiff testified that she did not inform anyone at her place of employment about a work-related injury for over a year and until after her employment contract ended. Sharon

Matteson (Ms. Matteson), clinic director for Swansboro Medical Center and Emerald Isle Primary Care Clinic until August 1999, testified she had administrative authority over all employees at the clinics and that she first learned that plaintiff claimed she suffered an on-the-job injury while traveling to the Riggs' home when plaintiff filed her workers' compensation claim in August 1999. Dr. Mahan, owner of Swansboro Medical Center and Emerald Isle Primary Care Clinic from 1995 until August 1999, testified that he first learned of plaintiff's alleged on-the-job injury when he received a letter from plaintiff's attorney in August or September of 1999. Plaintiff agreed that she did not inform Ms. Matteson or Dr. Mahan of an on-the-job injury between 15 August 1998 and July 1999. While plaintiff stated that she might have informed Ms. Matteson that she was involved in an automobile collision, plaintiff admitted that she did not tell Ms. Matteson that she was working at the time of the injury.

Dr. Hemmerlein testified that he supervised plaintiff's medical work and co-signed her work charts. He also stated that he was responsible for her because he "carried" her on his medical license. Dr. Hemmerlein stated that he did not provide insurance, did not make administrative decisions, and only addressed decisions relating to patient care. He approved of plaintiff making house calls and signed off on plaintiff's progress notes stemming from house calls she made, for which patients were subsequently billed. Following plaintiff's visit to Mr. Riggs' house, no note was registered in Mr. Riggs' medical chart and no bill was generated for plaintiff's services.

Dr. Hemmerlein also testified that he first learned that plaintiff injured her back in a motor vehicle collision while traveling to the Riggs' house between three and seven weeks after the accident. Dr. Hemmerlein stated that he could not remember specifics from the conversation where he first learned plaintiff had suffered a back injury. Dr. Hemmerlein discussed plaintiff's

condition while at work with her, documented it in her chart, and verbally referred plaintiff to physical therapy. He stated that it would be difficult to classify the interaction as a normal doctor/patient relationship since they were both medical providers, but that he considered himself as her treating physician for a while.

The evidence in the record fails to show that plaintiff provided written notice to her employer within thirty days as required by statute regarding her alleged work-related injury that occurred on 15 August 1998. The evidence also does not demonstrate a reasonable excuse for plaintiff's failure to give the required notice. Plaintiff testified that she did not inform anyone at her place of employment about a work-related injury for over a year, including the clinic director and the owner. Additionally, the evidence shows that the owner and the clinic director were unaware of plaintiff's alleged on-the-job injury until plaintiff filed for workers' compensation in August 1999.

There is no evidence that plaintiff gave Dr. Hemmerlein written notice of the injury or of her claim that the injury occurred within the course and scope of her employment. Dr. Hemmerlein's notes on plaintiff's back injury do not indicate the cause of plaintiff's injury or whether it occurred within the scope of her employment. Dr. Hemmerlein testified that he became aware of plaintiff's injury and its alleged occurrence within the course and scope of employment between three and seven weeks following the accident but did not remember specifics from the conversation. While Dr. Hemmerlein stated that he was plaintiff's supervisor, the evidence shows that he only addressed decisions relating to patient care and did not provide insurance or make administrative or personnel decisions.

The Industrial Commission has already weighed any conflicts in the evidence and this Court is not permitted to reevaluate evidence that may support a contrary conclusion and make a

decision based on the weight of the evidence. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). There is competent evidence in the record showing that plaintiff failed to give employer the statutorily required notice regarding plaintiff's alleged work-related injury and that plaintiff lacked a reasonable excuse for failing to give such notice. This evidence is sufficient to support the Industrial Commission's finding of fact.

The Industrial Commission's finding of fact that plaintiff did not allege her condition was work-related until a year after the automobile collision is supported by competent evidence and is therefore conclusive on appeal. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414. This finding of fact is sufficient to support the Industrial Commission's conclusion of law that plaintiff failed to give proper notice under the statute and lacked a reasonable excuse for failing to give such notice. This assignment of error is without merit.

Since we hold that the Industrial Commission did not err in denying plaintiff's workers' compensation claim by finding that plaintiff failed to give proper notice under the statute, we need not address plaintiff's remaining arguments.

Affirmed.

Judges TYSON and CALABRIA concur.

Report per Rule 30(e).