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NO. COA 03-1221

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2004

WILLIAM E. WINGFIELD, SR.
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 956523

NORTH CAROLINA CENTRAL
UNIVERSITY,
Employer,
Self-Insured,

and

KEY RISK MANAGEMENT
SERVICES,
Adjusting Agency,
Defendants.

Appeal by plaintiff from opinion and award entered 28 April 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 June 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General Amar Majmundar, for defendant-appellees.

The Law Office of Leslie O. Wickham, Jr., by Mark H. Woltz, for plaintiff-appellant.

HUDSON, Judge.

On 5 August 1999, plaintiff-employee William E. Wingfield, Sr., filed an Industrial Commission Form 18 alleging that he was suffering from major depression, post-traumatic stress disorder, and anxiety disorder due to his employment as a history professor at defendant-

employer North Carolina Central University (NCCU). On 27 October 1999, defendant-employer filed a Form 61 denying liability, and on 29 November 1999, plaintiff filed a Form 33 Request for Hearing.

Deputy Commissioner W. Bain Jones, Jr., heard the matter on 14 September 2000. Deputy Commissioner Jones filed an Opinion and Award on 28 February 2001, in which he ruled that plaintiff developed the occupational diseases of major depression with post-traumatic stress disorder and anxiety disorder due to causes and characteristics of and peculiar to his employment at NCCU.

Defendant-employer appealed to the Full Commission, and on 28 April 2003, the Full Commission entered an Opinion and Award reversing Deputy Commissioner Jones' ruling, thus denying plaintiff's workers' compensation claim. Plaintiff appeals.

Below is a summary of some of the facts found by the Full Commission. At the time of the hearing, plaintiff was fifty-eight years old. He earned his bachelor of science degree from the University of Memphis in 1965, and worked as a social worker for several years before earning his masters degree in history from that same university. Plaintiff subsequently obtained his doctorate degree in history from Duke University in 1987, after which he taught on a contractual basis at several area schools, including Durham Tech, Elon College, and Alamance Community College.

In 1993, plaintiff was offered and accepted a temporary, part-time position in the History Department at NCCU. The plaintiff was eventually offered, and accepted, a full-time contract position there. Plaintiff was the only Caucasian member of the History Department.

During plaintiff's second year, he was assigned to supervise two honor societies. While doing so, he discovered and reported what he deemed financial abuses by the previous faculty

advisor. In the Spring semester of that year, History Chairperson Dr. Sylvia Jacobs assigned plaintiff to take over teaching responsibilities of a set of classes previously assigned to another professor. Plaintiff perceived that the other professors resented him for taking over these classes.

Despite plaintiff's difficulties, he was offered and accepted a full-time permanent position in the Fall of 1996. Plaintiff claims that after attaining that position, other faculty members continually harassed him, and also claims that he was not made aware of faculty meetings, that he was given improper equipment, and that he was deprived of normal telephone access.

In January 1998, plaintiff was offered and accepted a tenure track position with defendant-employer. A short time later, the tenure committee voted not to reappoint plaintiff. Plaintiff appealed that decision to the University Chancellor, who overturned the decision and reappointed Plaintiff to the tenure track position. In the Fall of 1998, the tenure committee again denied plaintiff reappointment. Plaintiff's appeal of this decision was unsuccessful.

In December 1998, plaintiff had surgery on his carotid artery, and returned to work at NCCU in January of 1999. In April 1999, plaintiff resigned from his position with defendant-employer, contending that his treatment by colleagues caused him depression, anxiety, sleeplessness, and fits of rage. However, the Commission found as fact that the evidence did not bear out these allegations. The Commission's Findings of Fact 18 and 19 read as follows:

18. The medical testimony in the record does not establish that the plaintiff was placed by his employment with the defendant at a higher risk for depression, post traumatic stress disorder, anxiety, sleeplessness, or any other mental affliction.

19. The medical testimony in the record does not establish that the plaintiff's employment with the defendant caused the plaintiff any depression, post traumatic stress disorder, anxiety, sleeplessness, or any other mental affliction.

Based upon their findings of fact, the Commission, in denying plaintiff compensation, entered the following conclusions of law:

1. There is insufficient evidence of record from which to determine by its greater weight that the plaintiff's employment with the defendant as a History professor placed the plaintiff at an increased risk of developing, or caused the development of, depression, post traumatic stress disorder, anxiety, sleeplessness, or any other mental affliction. N.C.G.S. 97-53(13).

2. The plaintiff has no disease and no disability related to causes and conditions which are characteristic of and peculiar to the plaintiff's employment with the defendant-employer. N.C.G.S. 97-53(13).

Plaintiff appeals, and for the following reasons, we affirm.

On appeal of a workers' compensation decision, we are "limited to reviewing 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). An appellate court reviewing a workers' compensation claim "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty 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) (internal quotation marks omitted). In reviewing the evidence, we are required, in accordance with the Supreme Court's mandate of liberal construction in favor of awarding benefits, to take the evidence "in the light most favorable to plaintiff." *Id.*

The Full Commission is the "sole judge of the weight and credibility of the evidence." *Deese*, 352 N.C. at 116, 530 S.E.2d at 553. Furthermore,

the Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible. Requiring the Commission to explain its credibility determinations and allowing the Court of Appeals to review the

Commission's explanation of those credibility determinations would be inconsistent with our legal system's tradition of not requiring the fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.

Id. at 116-17, 530 S.E.2d at 553.

In making its determinations, the Commission "is not required . . . to find facts as to all credible evidence. That requirement would place an unreasonable burden on the Commission. Instead the Commission must find those facts which are necessary to support its conclusions of law." *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 602, 532 S.E.2d 207, 213 (2000)(internal quotation marks omitted); *see* N.C. Gen. Stat. §97-86 (2001). Moreover, the Commission must "make specific findings with respect to crucial facts upon which the question of plaintiff's right to compensation depends." *Gaines v. Swain & Son, Inc.*, 33 N.C. App. 575, 579, 235 S.E.2d 856, 859 (1977).

Here, plaintiff primarily challenges findings 6, 14, 18 and 19, which provide:

6. During this supervision the plaintiff discovered and reported what he judged to be past financial abuses by the faculty previously advising the honor societies. This was the first of several incidents that caused perceived hostility toward the plaintiff from his fellow History professors.

14. According to the plaintiff, during a faculty meeting in September of 1998 there was a near altercation. The plaintiff testified that Dr. Percy Murray intimidated the plaintiff with the threat of physical violence. The greater weight of the evidence does not corroborate plaintiff's version of this event.

18. The medical testimony in the record does not establish that the plaintiff was placed by his employment with the defendant at a higher risk for depression, post traumatic stress disorder, anxiety, sleeplessness, or any other mental affliction.

19. The medical testimony in the record does not establish that the plaintiff's employment with the defendant caused the plaintiff any depression, post traumatic stress disorder, anxiety, sleeplessness, or any other mental affliction.

As to finding number 6, the Commission found that plaintiff's discovery of certain accounting errors led to "perceived" hostility amongst his co-workers in the History department. Plaintiff argues that since there was corroboration by other witnesses, the mishandling of the funds and hostility were real, not perceived. However, the Commission found that the mishandling of funds simply led plaintiff to believe that other members of the department were being hostile toward him. Further, there is ample medical evidence to support the finding that plaintiff only perceived hostility.

In finding of fact 14, the Commission found that the greater weight of the evidence did not support plaintiff's version of an event that took place during a faculty meeting. Indeed, witnesses testified to varying accounts of this event. Thus, we conclude that the Commission carried out its function of weighing conflicting testimony, and that the evidence supports this finding.

Similarly, with regard to findings 18 and 19, ample testimony of record shows that plaintiff's treating physicians gave varying opinions on the cause of plaintiff's condition, as well as whether plaintiff's employment placed him at an increased risk for such condition. As such, we conclude that, after reviewing the deposition testimony of plaintiff's treating physicians, there was sufficient evidence of record to support the finding that plaintiff failed to carry his burden of proving that he had contracted an occupational disease.

An occupational disease is defined as "any disease . . . which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or

employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.” N.C.G.S. §97-53(13) (2001). Our courts have recognized work-related depression or other mental illness to be a compensable occupational disease “as long as the resulting disability meets statutory requirements.” *Jordan v. Central Piedmont Cmty. Coll.*, 124 N.C. App. 112, 119, 476 S.E.2d 410, 414 (1996). Further, the plaintiff must establish that “the mental illness or injury was due to stresses or conditions different from those borne by the general public.” *Smith-Price v. Charter Pines Behavioral Ctr.*, 160 N.C. App. 161, 168, 584 S.E.2d 881, 886 (2003) (citation omitted). Thus, a plaintiff has to show that his psychological condition, or the aggravation thereof, was (1) “due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment,” and (2) that it is not an “ordinary disease[] of life to which the general public is equally exposed.” N.C.G.S. §97-53(13).

In order to prove the first two elements of N.C.G.S. §97-53(13), a plaintiff must demonstrate that “as a matter of fact, the employment exposed the worker to a greater risk of contracting the disease than the public generally.” *Rutledge v. Tultex*, 308 N.C. 85, 93-94, 301 S.E.2d 359, 365 (1983). Additionally, “the final requirement in establishing a compensable claim under subsection (13) is proof of causation.” *Booker v. Duke Med. Ctr.*, 297 N.C. 458, 475, 256 S.E.2d 189, 200 (1979). To prove causation, the plaintiff must show that the employment “significantly contributed to, or was a significant causal factor in, the disease’s development.” *Rutledge*, 308 N.C. at 101, 301 S.E. at 369-70.

Here, having concluded that the evidence was sufficient to support the findings, we likewise conclude that the findings were sufficient to support the Commission’s conclusions of law that plaintiff was not placed at an increased risk of injury due to his employment with

defendant-employer or that plaintiff's disease was caused by conditions peculiar to plaintiff's employment.

Affirmed.

Judges GEER and THORNBURG concur.

Report per Rule 30(e).