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NO. COA04-1445

NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2005

THOMAS WAYNE HUNT, Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 959439

N.C. DEPARTMENT OF CORRECTION,
Employer, SELF-INSURED,
(KEY RISK MANAGEMENT SERVICES,
Servicing Agent),
Defendants.

Appeal by plaintiff from an opinion and award filed 29 July 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 8 June 2005.

Marshall, Williams & Gorham, by Ronald H. Woodruff; and Charles M. Tighe for plaintiff appellant.

Attorney General Roy Cooper, by Special Deputy Attorney General Sharon Patrick-Wilson, for the N.C. Department of Correction, defendant appellant.

McCULLOUGH, Judge.

Plaintiff Thomas W. Hunt appeals from an opinion and award of the North Carolina Industrial Commission denying his worker's compensation claim. We affirm.

I.

From approximately 1987 until 1999, Hunt was continuously employed as a correctional officer with custodial duties by the North Carolina Department of Corrections (DOC). On 24 August 1999, Hunt filed a Workers' Compensation claim seeking compensation for post-

traumatic stress syndrome with obsessive-compulsive disorder, which was alleged to be an occupational disease causally related to his employment.

At a hearing on Hunt's claim, the evidence tended to show the following: In 1989, another DOC employee repeatedly pointed a revolver at Hunt's head and threatened to kill him. When Hunt reported the incident, the employee was transferred. Hunt did not seek immediate medical attention in relation to these assaults and continued to perform his job without any ostensible difficulties.

In 1994, Hunt accepted a transfer to Lumberton Correctional Center. At that time, Patricia Chavis was the Superintendent at the Lumberton Facility; Michael Hardin was the Assistant Superintendent; and Captain William Britt was next in the line of supervision. Hunt and Assistant Superintendent Hardin never got along very well. Captain Britt was in charge of making duty assignments to correctional officers at Lumberton. Hunt contended that he was assigned to work in the segregation unit and in the dormitories more frequently than other officers, which is more stressful than other work assignments in the prison. Assistant Superintendent Hardin apparently instructed Captain Britt to assign Hunt to the segregation unit on several occasions, and Hunt apparently worked there more frequently than other officers. However, plaintiff also received assignments to work in other parts of the prison, including the front yard, the perimeter, and the gatehouse.

In 1995 or 1996, rumors circulated that Hunt was supplying drugs to inmates at Lumberton. Hunt complained about these allegations to Superintendent Chavis, who told him that the Lumberton supervisors needed to investigate if they heard such rumors, but that he had not been formally accused or investigated. Assistant Superintendent Hardin suspected that Hunt

might have been selling drugs to inmates, and he pursued the matter. However, Hunt was never formally investigated, and nothing was placed on his record regarding such allegations.

Evidence at the hearing also tended to show that, during the period of his employment with DOC, Hunt experienced a number of problems in his personal life. Hunt's wife had a miscarriage, followed by a difficult pregnancy resulting in the birth of a child, and by the summer of 1990, Hunt and his wife were having marital problems. They separated in August 1990, and on 22 August 1990, Hunt was sent home from work because he was distraught about the problems with his wife. During the same time period, Hunt's wife had tried to run him over with a vehicle, and he awakened one evening to find her standing over him with a knife in her hands. Hunt's wife also procured a warrant for his arrest for assault on a female. Later in 1990, Hunt and his wife reconciled; however, their marital problems continued, and he sometimes had to leave work after receiving a call from his wife. Hunt also experienced financial problems between 1994 and 1996. He took an extended family medical leave due to an illness suffered by his wife in 1997, and he missed work in 1998 due to the death of his niece.

On 23 June 1999, Hunt sought treatment from board-certified psychiatrist Dr. Robert Weinstein. Hunt discussed his work-related problems, but failed to apprise Dr. Weinstein of his marital or financial problems, his wife's illness, or the death of his niece. Dr. Weinstein diagnosed Hunt as having post-traumatic stress disorder (PTSD), and testified that Hunt had regressed to an "infantile" and non-functional state. Dr. Weinstein opined that Hunt was at an increased risk of developing PTSD because of his stressful employment with DOC and that there was a direct relationship between the PTSD and Hunt's employment.

A Deputy Commissioner with the Industrial Commission denied Hunt's claim. On an appeal by Hunt, the Full Commission (the Commission) entered an opinion and award in which

it found that Hunt was not a credible witness and that Dr. Weinstein's evaluation should not be given great weight because, *inter alia*, it was based on incomplete information by Hunt. The Commission made the following conclusions of law:

1. [Hunt] has failed to prove that he developed PTSD as a consequence of a particular accident or incident in the course and scope of his employment with [DOC]

2. [Hunt] has failed to prove that he suffers from PTSD as an occupational disease, which was characteristic of and peculiar to his job as a correctional officer. The great weight of credible evidence fails to establish a causal connection, [given that] there were also numerous personal stressors in [his] life.

3. Even if [Hunt] developed stress related to his poor relationship and dealings with his supervisor Michael Hardin, that was not unique or peculiar to [Hunt]'s employment as a correctional officer. Personality clashes or difficulties with supervisors can arise in any employment, and are not the basis for a claim for occupational disease.

Accordingly, the Commission denied Hunt's claim. Hunt now appeals.

II.

Hunt's arguments on appeal may be characterized as a challenge to the factual determinations, and resulting conclusions, made by the Commission. Specifically, Hunt asserts that the Commission erred by (1) ignoring and/or understating the stress that Hunt experienced at work and under-evaluating the resulting risk for development of PTSD; (2) determining that Dr. Weinstein's causation testimony was not credible because it was based upon incomplete information provided by Hunt; and (3) finding and concluding that Hunt had not met his burden of establishing a causal nexus between his job as a corrections officer and his development of PTSD. Put differently, Hunt contests the weight that the Commission gave to certain aspects of the evidence and the credibility determinations made by the Commission.

Standard of Review

The standard of review for an opinion and award of the North Carolina Industrial Commission is “(1) whether any competent evidence in the record supports the Commission’s findings of fact, and (2) whether such findings of fact support the Commission’s conclusions of law.” *Creel v. Town of Dover*, 126 N.C. App. 547, 552, 486 S.E.2d 478, 480 (1997). “The Commission’s findings of fact are conclusive on appeal if supported by competent evidence, notwithstanding evidence that might support a contrary finding.” *Hobbs v. Clean Control Corp.*, 154 N.C. App. 433, 435, 571 S.E.2d 860, 862 (2002). In determining the facts of a particular case, “[t]he Commission is the sole judge of the credibility of the witnesses and the weight accorded to their testimony.” *Effingham v. Kroger Co.*, 149 N.C. App. 105, 109-10, 561 S.E.2d 287, 291 (2002) (citations omitted). “This Court reviews the Commission’s conclusions of law *de novo*.” *Deseth v. LensCrafters, Inc.*, 160 N.C. App. 180, 184, 585 S.E.2d 264, 267 (2003).

Substantive Legal Principles

An illness, such as PTSD, which is not specifically listed as an occupational disease in the general statutes, may nevertheless be compensable as an occupational disease pursuant to N.C. Gen. Stat. §97-53(13) (2003) if the plaintiff demonstrates

- (1) [the disease is] characteristic of persons engaged in the particular trade or occupation in which the claimant is engaged;
- (2) [the disease is] not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and
- (3) there [is] “a causal connection between the disease and the [claimant’s] employment.”

Rutledge v. Tultex Corp., 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983) (citation omitted). The plaintiff has the burden of proof on all three of the foregoing elements. *Keel v. H & V Inc.*, 107 N.C. App. 536, 539, 421 S.E.2d 362, 365 (1992). “The first two elements . . . are satisfied where the claimant can show that ‘the employment exposed the worker to a greater risk of contracting the disease than the public generally.’” *Robbins v. Wake Cty. Bd. of Educ.*, 151 N.C. App. 518,

521, 566 S.E.2d 139, 142 (2002) (citation omitted). “The third element of the test is satisfied if the employment ‘significantly contributed to, or was a significant causal factor in, the disease’s development.’” *Hardin v. MotorPanels, Inc.*, 136 N.C. App. 351, 354, 524 S.E.2d 368, 371 (citation omitted), *disc. review denied*, 351 N.C. 473, 543 S.E.2d 488 (2000).

In the case of occupational diseases proof of a causal connection between the disease and the employee’s occupation must of necessity be based on circumstantial evidence. Among the circumstances which may be considered are the following: (1) the extent of exposure to the disease . . . during employment, (2) the extent of exposure outside employment, and (3) absence of the disease prior to the work-related exposure as shown by the employee’s medical history.

Booker v. Medical Center, 297 N.C. 458, 476, 256 S.E.2d 189, 200 (1979). When determining whether a plaintiff’s job significantly contributed to, or was a significant causative factor in, his development of an occupational disease, “the Commission may, of course, consider medical testimony, but its consideration is not limited to such testimony.” *Harvey v. Raleigh Police Dept.*, 96 N.C. App. 28, 35, 384 S.E.2d 549, 553 (citation omitted) (emphasis removed), *disc. review denied*, 325 N.C. 706, 388 S.E.2d 454 (1989).

Analysis

In his brief, Hunt contends that the Commission ignored and/or understated the evidence concerning his stress at work. As Hunt notes, the Commission did not catalogue every stressful incident that occurred during his employment with DOC. However, we conclude that the Commission’s findings are sufficient. A fact-finder is not required to make findings that recite all evidentiary facts presented at hearing; rather, “[t]he facts required to be found . . . are those material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached.” *Quick v. Quick*, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982). In the instant case the Commission’s opinion and

award contains findings that Hunt's employment involved performing stressful duties and was attended by stressful incidents. The Commission was not required to make more specific findings.

Hunt also contends that the Commission erred by discounting Dr. Weinstein's causation testimony. Specifically, Hunt asserts that "[a] competent opinion given by a trained observer should not be rejected or discounted except on the basis of contrary expert medical testimony or for inherent lack of credibility evidenced in the record." However, it is well established that "[t]he Commission is the sole judge of the credibility of witnesses and **may believe all or a part or none of any witness's testimony . . .**" *Harrell v. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (emphasis added), *disc. review denied*, 300 N.C. 196, 269 S.E.2d 623-24 (1980). In the instant case, the Commission found that Dr. Weinstein was a truthful witness, but discounted his causation testimony because he had not been apprised of Hunt's personal and financial problems. Thus, although the Commission could have found Dr. Weinstein's testimony to be dispositive, it was not required to do so, and this Court will not second-guess the Commission's credibility determination.

Hunt further argues that the Commission erred by finding and concluding that he had not established the requisite causal nexus between his PTSD and his employment. Our review reveals that, the Commission could have determined that Hunt's PTSD was an occupational disease that was causally related to his employment as a correctional officer based upon, *inter alia*, the testimony of Hunt and Dr. Weinstein. However, the record also reveals that Hunt experienced numerous stressors in his personal life that were unrelated to his employment and many stressors at work that were not in any way unique to his particular job as a corrections officer with custodial responsibilities. Therefore the Commission could permissibly find and

conclude, as it did, that Hunt's PTSD was not an occupational disease that was causally related to his employment as a correctional officer.

Thus, the Commission's conclusions of law are supported by appropriate findings of fact, which are in turn supported by competent record evidence. Therefore, Hunt's assignments of error are overruled, and the Commission's opinion and award is

Affirmed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).