NO. COA03-442

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2004

WINZELL E. NEELY,
Employee,
Plaintiff;

v.

North Carolina Industrial Commission
I.C. File No. 968777

LUCENT TECHNOLOGIES, INC.,
Employer,

SELF-INSURED (GATES MCDONALD,
Third Party Administrator),
Defendant.

Appeal by plaintiff from opinion and award entered 8 January 2003 by the Industrial Commission. Heard in the Court of Appeals 15 January 2004.

Law Offices of Kathleen G. Sumner, by *Kathleen G. Sumner, for plaintiff-appellant.*

Womble, Carlyle, Sandridge & Rice, P.L.L.C., by Stan B. Green, for defendant-appellee.

HUDSON, Judge.

Plaintiff appeals from an opinion and award entered 8 January 2003 by the Industrial Commission, contending that the Commission incorrectly applied the relevant standards and case law to the facts of this case and erred in giving no weight to the expert medical testimony presented. For the reasons discussed below, we disagree, and affirm the Commission's opinion and award.

Background

The following is a summary of the facts found by the Full Commission. At the time of the hearing before the deputy commissioner, plaintiff was fifty-one years old and had been employed by defendant Lucent Technologies, Inc., ("Lucent") for twenty-eight years. At the time of the events at issue, plaintiff worked as a secretary, performing various administrative functions, some of which required her to be away from her desk. Plaintiff also spent time and effort at work assisting Rebecca Harrison ("Ms. Harrison"), a fellow Lucent employee and friend of plaintiff's, who had been injured and had restrictions on activities at work.

In late July or early August 1999, defendants imposed several new requirements on plaintiff, including giving her supervisor notice whenever plaintiff would be away from her desk for more than fifteen minutes. These changes were prompted by the supervisor's concern about changes in plaintiff's production at work. Plaintiff fainted 9 September 1999 while meeting with a union representative, and stated in an incident report that she felt stressed and harassed. After her fainting spell, plaintiff consulted a physician who noted increased work stress, placed her on medication, and referred her to Dr. Brian Farah.

Dr. Farah began treating plaintiff 10 December 1999, and diagnosed her with major depression with recent suicidal thoughts. In Dr. Farah's opinion, stress due to work harassment was a significant contributing factor in plaintiff's condition and plaintiff had been placed at increased risk of developing her condition due to the stress of her job. The Commission found this testimony "not persuasive," stating in finding of fact 6 that

> Dr. Farah formulated his opinion without any reference to plaintiff's medical or employment history other than what plaintiff herself provided on her initial visit. Dr. Farah also admitted that the medical records in this case were important and that his review of such records could change his opinion regarding plaintiff's diagnosis. Dr. Farah also stated that other concurrent stressors in plaintiff's life including her daughter's illness, her aunt's sickness and pending death, and her November 1999 mammogram could be

> stressful and that he had not previously considered these stressors in formulating his opinion regarding the cause of plaintiff's depression. As Dr. Farah's causation opinion is not based upon the totality of circumstances in plaintiff's case, his opinion should be given no weight.

The Commission also found no suggestion in plaintiff's medical records that plaintiff's employment caused her high blood pressure, fainting spells, or any head or neck injury, nor that her depression was the result of any accident. Instead, the Commission found that plaintiff had shown her stress was caused by taking care of Ms. Harrison at work and by Ms. Harrison's strained relationship with defendant. The Commission also found that plaintiff's job did not place her at any increased risk of depression as compared to the general public. As a result, the Commission concluded that

> 1. Plaintiff has failed to prove that her job with defendant-employer was a significant contributing factor in the development of her depression or that she was placed at an increased risk as compared to the general public of contracting depression due to job-related stress. [citations omitted]
>
> 2. Plaintiff has failed to prove by the greater weight of the evidence that she sustained an injury by accident or developed an occupational disease while in the course and scope of her employment with defendant-employer; therefore, she is not entitled to recover any workers' compensation benefits in this matter. [citations omitted]

Analysis

I.

The standard of appellate review in a workers' compensation case is clear. This Court first considers whether any challenged findings of fact are supported by evidence in the record, and then determines whether those findings support the conclusions of law. *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). This Court does not weigh evidence; we merely 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) (citation and quotation marks omitted), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). Because the Commission is the "sole judge of the weight and credibility of the evidence," the Commission's findings are binding if they are supported by any of the evidence, even if the evidence could also have supported a contrary finding. *Deese*, 352 N.C. at 115-16, 530 S.E.2d at 552-53. Finally, in making these determinations, this Court must view the evidence in the light most favorable to plaintiff. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414.

Plaintiff first argues that the Commission applied the wrong standard for a psychiatric injury by accident that arose out of and in the course of employment. For the reasons discussed below, we disagree.

Plaintiff contended at oral argument that the "accident" occurred on 3 September 1999, when she experienced a stressful disciplinary meeting. In her brief, plaintiff argues that the 3 September 1999 disciplinary meeting and the 9 September 1999 fainting spell constituted accidents which exacerbated plaintiff's depression, and contends that the Commission erred in failing to make specific findings of fact about whether those incidents qualified as "accidents." "Under the North Carolina Workers' Compensation Act, an injury arising out of and in the course of employment is compensable only if caused by an 'accident.'" *Adams v. Burlington Industries, Inc.*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983). "Our Supreme Court has defined the term 'accident' as used in the Workers' Compensation Act as an unlooked for and untoward event which is not expected or designed by the person who suffers the injury." *Porter v. Shelby Knit, Inc.*, 46 N.C. App. 22, 26, 264 S.E.2d 360, 363 (1980) (quotation marks omitted). "The elements of an 'accident' are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Id.* (internal citations

and quotation marks omitted). Under the Workers Compensation Act, the Commission may "award compensation for psychiatric problems exacerbated by an accident." *Toler v. Black & Decker*, 134 N.C. App. 695, 701, 518 S.E.2d 547, 551 (1999), *disc. review denied* 351 N.C. 371, 542 S.E.2d 663 (2000).

The Commission's findings indicate that it considered whether there were unusual events in plaintiff's employment which could constitute an accident. Finding 7 states that "[p]laintiff's depression did not occur as a result of an accident; there are no good grounds to suggest that plaintiff suffered or suffers any physical injury as a result of her employment." Finding 9 also states that "[c]onsidering all the evidence offered there was nothing unusual about plaintiff's job with defendant-employer." Based on these findings, the Commission concluded that plaintiff had "failed to prove by the greater weight of the evidence that she sustained an injury by accident."

"The Commission is not required . . . to find facts as to all credible evidence. That requirement would place an unreasonable burden on the Commission." *London v. Snak Time Catering, Inc.*, 136 N.C. App. 473, 476, 525 S.E.2d 203, 205 (2000), *cert. denied* 352 N.C. 589, 544 S.E.2d 781 (2000). "Instead the Commission must find those facts which are necessary to support its conclusions of law. *Id.* While the Commission's findings here could have been more explicit regarding the alleged accidents, they are sufficient to support its conclusion that plaintiff did not sustain an injury by accident.

II.

Plaintiff also contends that finding 9 is not supported by the evidence. Finding 9 states:

> Although plaintiff developed depression, it was not the result of anything caused by her employer or her employer asking her to do anything unusual. Plaintiff was not placed in an unusually stressful situation. Considering all the evidence offered there was nothing unusual about plaintiff's job with defendant-employer or what had been asked of her as compared to any person similarly situated.

> The work plaintiff was asked to do by defendant-employer was the same kind of work most secretaries are asked to do whether they work for this employer or any other employer in the area. Plaintiff was merely asked to perform her job in the manner it should have been performed. It does not cause any unusual stress to be asked to perform one's job as it should be done which includes being asked to stay at one's workstation so one can perform their assigned tasks.

Because the Commission is the "sole judge of the weight and credibility of the evidence," the Commission's findings are binding if they are supported by any of the evidence, even if the evidence could also have supported a contrary finding. *Deese*, 352 N.C. at 116, 530 S.E.2d at 552-53. Plaintiff's testimony indicated that her job included typical secretarial tasks such as handling mail, making conference and event arrangements, typing and managing office supplies. The activities and incidents discussed in plaintiff's brief are largely related to inter-personal difficulties rather than with the duties she was asked to perform. In addition, one of the defendant's witnesses testified that plaintiff's job was not a stressful position. While the testimony may have supported a different finding, there was evidence to support finding made by the Commission, and we will not re-weigh the evidence.

III.

Plaintiff also argues that the Commission erred in giving no weight to the sole medical provider's medical opinion. As discussed below, we disagree.

In cases involving complicated medical questions, "only an expert can give competent opinion evidence as to the cause of the injury." *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980). However, the Commission is the sole judge of the credibility of any witnesses, and the weight that should be given their testimony. *Adams*, 349 N.C. at 680, 509 S.E.2d at 413. "While the Commission is the sole judge of the credibility of witnesses and may believe all or a part or none of any witness's testimony, it nevertheless may

not wholly disregard competent evidence." *Harrell v. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835, *cert. denied* 300 N.C. 196, 269 S.E.2d 623 (1980) (internal citation omitted).

Here, unlike in *Harrell*, the Commission clearly considered Dr. Farah's testimony, but chose to accord it no weight because Dr. Farah had not reviewed relevant employment and medical records nor considered concurrent stressors in plaintiff's life. Because Dr. Farah had not taken into account these factors and circumstances, the Commission found his testimony "unpersuasive." The determination of witness credibility is solely the province of the Commission, and this Court will not re-weigh the evidence. The Commission's finding regarding Dr. Farah's testimony is supported by the evidence before the Commission, particularly Dr. Farah's acknowledgment he had not reviewed plaintiff's medical records and that his opinion about the cause of plaintiff's depression might change once he received and reviewed those records.

These findings, in turn, support the conclusion that plaintiff failed to prove that her employment was a significant contributing factor in the development of her depression or that she was placed at an increased risk of contracting depression due to job-related stress as compared to the general public. Having determined that the Commission's findings are supported by evidence, and that those findings support the conclusions of law, we affirm the Commission's opinion and award.

Affirmed.

Judges TYSON and STEELMAN concur.

Report per Rule 30(e).