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NO. COA03-618

NORTH CAROLINA COURT OF APPEALS

Filed: 4 May 2004

DORETHA JONES-BAILEY,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 972092

CARLISLE PLASTICS, INC.,
Employer,

and

SEDGWICK CMS,
Servicing Agent,
Defendants.

Appeal by defendants from opinion and award filed 7 March 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 15 March 2004.

Scudder & Hedrick, by John A. Hedrick, for plaintiff-appellee.

Wilson & Ratledge, PLLC, by James E.R. Ratledge and Matthew K. Zeko, for defendant-appellants.

THORNBURG, Judge.

Carlisle Plastics, Inc. and Sedgwick CMS (“defendants”) appeal from an opinion and award filed 7 March 2003 by the North Carolina Industrial Commission (“the full Commission”) in favor of Doretha Jones-Bailey (“plaintiff”). We affirm.

Plaintiff filed a workers' compensation claim alleging that she injured her back on 28 June 1999 when she lifted a heavy box while working for defendant Carlisle Plastics. Plaintiff's evidence tends to show the following: After the injury, plaintiff reported the incident to her section leader, Michael Dixon. Dixon did not complete an incident report and told plaintiff to return to work. Plaintiff sought medical treatment for her back injury on 5 July 1999 at Nash General Hospital emergency room. Plaintiff was then treated by a series of physicians for her back injury. She was diagnosed with a disc herniation by Dr. Omatta Sirisena on 23 July 1999. Ultimately, plaintiff was treated by Dr. David Miller, an orthopedic surgeon. Dr. Miller determined that plaintiff had problems with her lumbar discs and performed lumbar fusion surgery. As of 16 October 2001, plaintiff continued to experience back and leg pain.

Plaintiff first brought this case before Deputy Commissioner Edward Garner, Jr. in Nashville, North Carolina, on 24 September 2001. On 31 January 2002, Deputy Commissioner Garner issued an opinion and award wherein he concluded that competent evidence of record does not support plaintiff's allegations of an at-work injury occurring on 28 June 1999. Accordingly, Deputy Commissioner Garner denied compensation to plaintiff.

Plaintiff appealed to the full Commission. In an opinion and award filed 7 March 2003, the full Commission reversed the opinion and award of Deputy Commissioner Garner and entered the following pertinent findings of fact:

2. On June 28, 1999, plaintiff was working a twelve hour shift and had to lift a heavy box. When she lifted the box, she felt a pull in her back. She reported the incident to Mike Dixon, her section leader, and he laughed, saying, "You're falling apart." Mr. Dixon was the only person to whom she was supposed to report her back injury because he was her section leader. An employee was supposed to report her injury to her immediate supervisor (her section leader). The section leader is responsible for reporting the injury to the supervisor (shift manager). Although Dixon testified 2 years after the incident that he did not recall plaintiff telling him,

he did not deny that she did. His testimony that if plaintiff had told him about the incident he would have filled out an incident report is found not credible. . . .

3. After lifting the box and injuring her back, plaintiff asked Mike Dixon to give her some help with her work but he did not. So, she returned to her job as Mr. Dixon had told her to do. Plaintiff continued to work, although she was in pain. She did not stay out of work because she was afraid of losing her job. When she got home on June 28, 1999, her back was hurting so badly that her husband had to put icepacks on it. Plaintiff worked on June 29 and 30, 1999. Evidence of a medical report of Dr. Omatta M. Sirisena, dated the day after the specific traumatic incident, does not impeach plaintiff's credibility. That report merely reflects the results of an echo Doppler study ordered earlier and contains no information from plaintiff. Evidence of a back injury in 1993 for which the 1995 claim was filed also does not impeach plaintiff's testimony.

4. Following her injury on June 28, 1999, plaintiff continued working as scheduled until July 5, 1999, when she first sought medical treatment for her back injury at an emergency room. She went to the emergency room because she reported her injury to defendant employer as she was supposed to do and no one did anything. When she went to the emergency room, she reported that she had injured her back at work. Thereafter, she sought treatment from her family physician, Dr. Sirisena.

5. Dr. Sirisena examined plaintiff on July 8, 1999. At that time, plaintiff was experiencing low back pain, with pain radiating into her left leg. During a follow-up examination on July 12, 1999, Dr. Sirisena excused plaintiff from work and ordered an MRI.

6. Based upon the results of the MRI, which revealed a herniated disc at L3-L4, Dr. Sirisena referred plaintiff to Dr. Macedon. Dr. Macedo treated plaintiff conservatively. However, the conservative treatment failed to improve plaintiff's symptoms and she eventually came under the care of Dr. David Miller.

7. Ultimately, Dr. Miller performed lumbar fusion surgery at L3-L4. As of October 16, 2001, plaintiff continued to have neurological symptoms in her left leg and occasional symptoms in her right leg. She walked using a cane. As of that date, plaintiff was incapable of earning wages in any employment.

8. Plaintiff's herniated disc at L3-L4 was caused by the lifting incident on June 28, 1999. As a result of that incident, plaintiff was rendered incapable of earning wages from any employer from July 5, 1999, through the date of the hearing before the deputy commissioner.

Based on these findings of fact, the full Commission concluded as a matter of law as follows:

1. On June 28, 1999, plaintiff sustained a compensable specific traumatic incident of the work assigned, arising out of and in the course of her employment with Carlisle Plastics. N.C. Gen. Stat. §97-2(6).

2. As a result of her injury on June 28, 1999, plaintiff is entitled to payment of total disability compensation at the rate of 66 2/3% of her average weekly wage as of the date of her injury. Such compensation shall be paid from July 5, 1999, and continuing thereafter until plaintiff returns to work or until Order of the Industrial Commission allowing defendants to cease payments of total disability compensation. N.C. Gen. Stat. §97-29.

3. Plaintiff is entitled to payment of all medical expenses incurred for treatment of her June 28, 1999, injury, including expense incurred for treatment ordered or provided by Drs. Sirisena, Macedo and Miller. N.C. Gen Stat. §97-25.

The full Commission therefore awarded plaintiff total compensation at the rate of 66 2/3% of her average weekly wage as of 28 June 1999 from 5 July 1999 until plaintiff returns to work or until order of the Industrial Commission allowing defendants to cease payments of total disability compensation. The full Commission also awarded plaintiff all medical expenses incurred as a result of her 28 June 1999 injury. Defendants appeal from the opinion and award of the full Commission.

The dispositive issue on appeal is whether the full Commission's findings of fact are supported by the evidence and whether the findings of fact in turn support the conclusions of law. Specifically, defendants argue two issues: (1) that the full Commission disregarded

plaintiff's medical reports and (2) that the full Commission's finding that the employer is not credible is not supported by any evidence. For the reasons stated herein, we affirm.

On appeal of a workers' compensation decision, this Court is limited to determining whether findings of fact are supported by competent evidence and whether the findings of fact support the full Commission's conclusions of law. *See Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). Thus, this Court may not "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." *Id.* at 115, 530 S.E.2d at 552 (citations omitted). Furthermore, the evidence tending to support the plaintiff's claim must be taken in the light most favorable to the plaintiff, and the plaintiff "is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). If there is competent evidence to support the finding of fact, the finding of fact must stand, even if there is evidence to the contrary. *Id.*

Defendants assigned error to the full Commission's findings of fact numbers 2, 3 and 4, *supra*. Competent evidence supports these findings of fact. The three findings of fact at issue are supported by plaintiff's testimony and the medical records included within the record on appeal. The record on appeal contains hospital records detailing that plaintiff was examined and treated for a back injury soon after 28 June 1999. Plaintiff's medical records indicate that in July and August of 1999 plaintiff was examined and treated by Dr. Omatta Sirisena and Dr. Nelson Macedo for her back injury. A record from a 14 October 1999 follow-up appointment with Dr. Macedo indicates that plaintiff said that her back pain resulted from lifting heavy boxes at work in 1999, and that she had been out of work since June of 1999. Furthermore, the record contains plaintiff's testimony about the 28 June 1999 incident and her reporting of that incident both to

Dixon and her health care providers. Thus, there is competent evidence in the record to support the above findings of fact.

Defendants' primary arguments in reference to the findings of fact are that the full Commission failed to take into consideration the contents of plaintiff's medical records, and secondly, that the full Commission erred when it found that the employer (Dixon) was not a credible witness. Specifically, defendants contend that the full Commission did not reference specific medical reports or acknowledge the absence of the documentation of the 28 June 1999 incident in several of the medical records.

The full Commission is charged with the statutory duty to consider and weigh all of the competent evidence in the record and to make definitive findings of fact before rendering its decision. *Harrell v. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (1980), *disc. rev. denied*, 300 N.C. 196, 269 S.E.2d 623 (1980). However, the full Commission is not required to make findings as to each statement made by any given witness or make findings rejecting specific evidence. *Bryant v. Weyerhaeuser Co.*, 130 N.C. App. 135, 139, 502 S.E.2d 58, 62 (1998), *disc. rev. denied*, 349 N.C. 228, 515 S.E.2d 700 (1998).

The full Commission did reference plaintiff's medical records in its findings of fact, referencing, for example, a visit plaintiff made to Dr. Sirisena on 29 June 1999. The record from that visit does not contain any mention of plaintiff's back injury. In its findings of fact, the full Commission noted that this record does not impeach plaintiff's credibility because it "merely reflects the results of an echo Doppler study ordered earlier and contains no information from plaintiff." The findings of fact also make reference to several of plaintiff's other medical records that do relate to her back injury. Because the full Commission considered the evidence in the

record, including plaintiff's medical records, and made relevant and sufficient findings of fact, we overrule this assignment of error.

In reference to the employer's credibility, the full Commission found the following: "[Dixon's] testimony that if plaintiff had told him about the incident he would have filled out an incident report is found not credible." The full Commission may reject all or any part of any witness's testimony. *See Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 684 (1982). Further, there is no requirement that the full Commission explain its credibility determinations. *See Deese*, 352 N.C. at 116-17, 530 S.E.2d at 553. Thus, the full Commission did not err in weighing the testimony of Dixon and judging it not credible. Accordingly, this assignment of error is overruled.

Defendants also assert that the full Commission's conclusions of law and award are not supported by competent evidence in the record. However, defendants' brief does not discuss or advance any arguments regarding the full Commission's conclusions of law or award. Thus, the assignments of error as to the conclusions of law and the award are deemed abandoned. N.C.R. App. P. 28(a).

For the reasons set forth above, we affirm the decision of the full Commission granting compensation to plaintiff.

Affirmed.

Judges TIMMONS-GOODSON and LEVINSON concur.

Report per Rule 30(e).