

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-1137
NORTH CAROLINA COURT OF APPEALS

Filed: 17 July 2012

CALANDRA MURPHY-SMITH,
Employee,
Plaintiff-Appellant,

v.

North Carolina
Industrial Commission
I.C. Nos. 977761 & W12720

NORTH CAROLINA DEPARTMENT OF
CORRECTION,
Employer,

SELF INSURED (CORVEL CORPORATION,
Third-Party Administrator),
Defendants-Appellees.

Appeal by Plaintiff from opinion and award entered by the
North Carolina Industrial Commission on 11 May 2011. Heard in
the Court of Appeals 6 March 2012.

*Brumbaugh, Mu & King, P.A., by Nicole D. Hart, for
Plaintiff-Appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General
Karissa J. Davan, for Defendant-Appellee.*

McGEE, Judge.

Calandra Murphy-Smith (Plaintiff) initiated this action before the North Carolina Industrial Commission by filing a Form 18 dated 1 April 2009. The following facts are undisputed on appeal. Plaintiff was an employee of the North Carolina Department of Correction (Employer). Plaintiff fell while conducting an inmate count on 3 June 2008. Plaintiff testified that, after completing her count, she informed her supervisor that she needed to seek medical attention. That same day, Plaintiff was diagnosed with back pain and "written out of work" until 10 June 2008. Plaintiff testified that, after returning to work on 10 June 2008, her back "popped." After consulting a doctor, Plaintiff was relieved from work for an additional three days. As a result of her 3 June 2008 injury, and pursuant to N.C. Gen. Stat. § 143-166.13 *et seq.*, Plaintiff was compensated for her time away from work.

Plaintiff further testified that, on 23 February 2009, while collecting the belongings of an inmate, she felt a sharp pain in her back. After completing this task, Plaintiff left work early and went to the Express Care at Craven Regional Medical Center, where she was diagnosed with a back sprain. Plaintiff's medical records indicated she could return to work after three days, but she was restricted to "light duty."

Employer denied Plaintiff's workers' compensation claim in a Form 61 dated 20 April 2009, asserting that Plaintiff's injury was not the result of an accident. Plaintiff requested a hearing to review Employer's denial of her workers' compensation benefits. Deputy Commissioner John B. Deluca, in an opinion and award filed 18 October 2010, awarded Plaintiff, *inter alia*, salary continuation. The deputy commissioner concluded that "[o]n February 23, 2009, [P]laintiff sustained an injury by accident arising out of and in the course of her employment with . . . [E]mployer in the form of a specific traumatic incident of the work assigned."

Employer appealed to the Industrial Commission. The Commission affirmed the award, "with certain modifications." The Commission found that "Plaintiff sustained a compensable injury to her back as a result of a specific traumatic incident of the work assigned on June 3, 2008[,] " rather than on 23 February 2009. The Commission directed Employer to pay for Plaintiff's medical treatment, but made no mention of salary continuation.

Plaintiff argues on appeal that "[t]he Full Commission completely failed to address Deputy Commissioner Deluca's award of salary continuation or [Employer's] assignment of error." Therefore, Plaintiff asks this Court to "uphold Deputy

Commissioner DeLuca's [o]pinion and [a]ward including his award of salary continuation." Alternatively, Plaintiff requests that her claim "be remanded back to the Full Commission for specific findings of fact and conclusions of law on the issue of Plaintiff's disability and her entitlement to salary continuation."

"The standard of appellate review of an opinion and award of the Industrial Commission in a workers' compensation case is whether there is any competent evidence in the record to support the Commission's findings of fact and whether these findings support the Commission's conclusions of law." *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997). "[T]he Industrial Commission's conclusions of law are reviewable *de novo*." *Whitfield v. Laboratory Corp. of Am.*, 158 N.C. App. 341, 348, 581 S.E.2d 778, 783 (2003). The findings of fact and conclusions of law of the Industrial Commission must be sufficient to allow the reviewing court to "determine the rights of the parties upon the matters in controversy[.]" *Pardue v. Tire Co.*, 260 N.C. 413, 416, 132 S.E.2d 747, 749 (1963).

When affirming, with modification, an opinion and award of a deputy commissioner, the Commission need not restate facts and conclusions that need no modification. See *Polk v. Nationwide*

Recyclers, Inc., 192 N.C. App. 211, 218, 664 S.E.2d 619, 624 (2008) ("We see no reason to require that such an order restate all the findings of fact and conclusions of law from the original order that need no modification."). However, "[i]t is well established that when a party appeals to the Full Commission, it is the 'duty and responsibility of the full Commission to decide all of the matters in controversy between the parties.'" *Alphin v. Tart L.P. Gas Co.*, 192 N.C. App. 576, 583, 666 S.E.2d 160, 165 (2008) (citation omitted); *see also Vieregge v. N.C. State University*, 105 N.C. App. 633, 638, 414 S.E.2d 771, 774 (1992) ("This Court has held that when the matter is 'appealed' to the full Commission pursuant to G.S. 97-85, it is the duty and responsibility of the full Commission to decide all of the matters in controversy between the parties.") (citation omitted).

In Employer's Form 44 application for review, Employer specifically appealed from the deputy commissioner's second conclusion of law, which stated that:

"As the result of her February 23, 2009 injury by accident in the form of a specific traumatic incident, [P]laintiff is entitled to have [Employer] pay her salary continuation for her lost time from work due to this compensable injury. These benefits represent wage replacement benefits and are analogous to benefits under N.C. Gen. Stat. § 97-29. N.C. Gen. Stat. § 143-166.14."

The Commission did not make any findings of facts or conclusions of law regarding Plaintiff's entitlement to salary continuation – an issue that was properly before it. Thus, the Commission has not adequately addressed the issue of salary continuation. We remand for further findings and conclusions on the issue of Plaintiff's claim for salary continuation.

Remanded.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e).