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NO. COA03-15

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2004

JAMES WEST, JR.,
Employee,
Plaintiff-Appellee,

v.

North Carolina Industrial Commission
I.C. File No. 982867

McBANE-BROWN, INC.,
Employer,

FEDERATED MUTUAL
INSURANCE COMPANY,
Carrier,
Defendants-Appellants.

Appeal by defendants from opinion and award entered 15 August 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 November 2003.

No brief for plaintiff-appellee.

Bryant, Patterson, Covington & Idol, P.A., by David O. Lewis for defendants-appellants.

McGEE, Judge.

McBane-Brown, Inc. (employer) and Federated Mutual Insurance Company (collectively defendants) appeal from an opinion and award of the North Carolina Industrial Commission (the Commission) entered 15 August 2002 finding that James West, Jr. (plaintiff) suffered an injury by accident and contracted an occupational disease.

The evidence before the Commission tended to show that plaintiff began working for employer in January 1986 as a sheetmetal mechanic and was working on 1 October 1999. Defendant's job required him to remove and install heating and air conditioning systems. Plaintiff worked primarily on older homes and often worked in confined spaces in attics and basements. Plaintiff was removing and replacing the heating and air conditioning systems in a forty-year-old home on 1 October 1999. Plaintiff was connecting a flue pipe on the back side of the furnace. Plaintiff described the area where he was working as a "brick rubble pile." In order to complete the work under the house, plaintiff had to pull himself around on his elbows. During this process, a brick tore through his shirt and scraped his right elbow. The area around plaintiff's elbow became swollen and streaks developed around the scrape. The swelling lasted for about three days and then returned to normal. Plaintiff later developed swelling, aching, and stiffness in his right knee.

Plaintiff sought treatment from Dr. William W. Truslow (Dr. Truslow) on 11 October 1999. Dr. Truslow aspirated plaintiff's right knee, removing a significant amount of white/yellow fluid. Dr. Truslow sent plaintiff to Moses Cone Hospital that same day. At the hospital, repeat aspirations revealed that plaintiff had a staph infection in his right knee. Dr. Dick R. Lavender (Dr. Lavender) performed an arthroscopic surgery on plaintiff's right knee on 13 October 1999. During the surgery, fluid gushed from the knee. Plaintiff's menisci and ACL were intact, but there was marked synovial thickening which Dr. Lavender cleared with a shaver. Plaintiff was discharged from the hospital on 18 October 1999.

Dr. Lavender's office performed plaintiff's follow-up care. Dr. Lavender performed an arthroscopic medial meniscectomy on plaintiff's right knee because of a torn medial meniscus on 26 January 2000. Dr. Lavender released plaintiff to return to work on 17 February 2000, but

prohibited plaintiff from squatting and crawling. After Dr. Lavender retired in June 2000, his associate, Dr. W. Dan Caffrey, Jr. (Dr. Caffrey) assumed plaintiff's care.

Due to the work restrictions, plaintiff has been unable to perform his prior duties as a sheet metal mechanic. Because plaintiff is unable to crawl around in basements and under houses, his work is restricted to jobs that can be performed while standing upright.

A deputy commissioner entered an opinion and award on 10 May 2001 denying plaintiff's claim for compensation. The conclusions of law were that plaintiff did not sustain an injury by accident arising out of and in the scope of his employment and that plaintiff did not suffer from an occupational disease. Plaintiff appealed to the Commission. The Commission reversed the deputy commissioner's award and concluded that plaintiff suffered an injury by accident and contracted an occupational disease. Defendants appeal.

On appeal from an opinion and award of the Commission, our Court is "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). "Under our Workers' Compensation Act, 'the Commission is the fact finding body.'" *Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998) (quoting *Brewer v. Trucking Co.*, 256 N.C. 175, 182, 123 S.E.2d 608, 613 (1962)). "'The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.'" *Adams*, 349 N.C. at 680, 509 S.E.2d at 413 (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965)). "The facts found by the Commission are conclusive upon appeal to this Court when they are supported by competent evidence, even when there is evidence to support contrary findings." *Pittman v. International Paper Co.*, 132 N.C. App. 151, 156, 510 S.E.2d 705, 709, *disc. review denied*, 350

N.C. 310, 534 S.E.2d 596, *aff'd*, 351 N.C. 42, 519 S.E.2d 524-25 (1999). So long as “there is *any* credible evidence to support the findings, the reviewing court is bound by it.” *Roman v. Southland Transp. Co.*, 350 N.C. 549, 556, 515 S.E.2d 214, 219 (1999).

I.

Defendants first argue that the Commission’s findings and conclusions that plaintiff sustained an injury by accident arising out of and in the course of his employment are unsupported by competent evidence and are contrary to law. Defendants argue that the evidence fails to show injury by accident for the following three reasons: (1) crawling under houses and suffering cuts and abrasions is part of the normal work routine, (2) there is no evidence that plaintiff sustained an elbow injury because of an interruption in his normal work routine, and (3) there is no evidence that links an infecting agent from plaintiff’s elbow to an infecting agent in his knee.

“For an injury to be compensable, the plaintiff must introduce competent evidence to support the inference that an accident caused the injury in question.” *Cody v. Snider Lumber Co.*, 328 N.C. 67, 70, 399 S.E.2d 104, 106 (1991). “An accident is ‘an unlooked for and untoward event which is not expected or designed by the person who suffers the injury.’” *Calderwood v. Charlotte-Mecklenburg Hosp. Auth.*, 135 N.C. App. 112, 115, 519 S.E.2d 61, 63 (1999), *disc. review denied*, 351 N.C. 351, 543 S.E.2d 124 (2000) (quoting *Adams v. Burlington Industries*, 61 N.C. App. 258, 260, 300 S.E.2d 455, 456 (1983) (citations omitted)). “An accident therefore involves ‘the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences.’” *Id.*

The challenged findings of fact are as follows:

4. On October 1, 1999, plaintiff was working on a job for defendant-employer at an older house with a co-worker, Lynn

Gray. The job required the removal of the old furnace and cooling coil from under the house near the chimney where the flue connected. There were pieces of brick on the ground from the construction of the chimney. Plaintiff crawled over the broken pieces of brick to remove the old furnace and cooling coil. The broken pieces of brick tore through plaintiff's shirt and scraped or skinned his right elbow.

5. Over the next several days, the area around plaintiff's right elbow became red, hot and swollen with red streaks that extended to his right wrist. Infections subsequently traveled through plaintiff's bloodstream and infected his right knee. On October 11, 1999, plaintiff's right knee was red, hot, swollen, and he had great difficulty walking due to the pain.

...

14. Plaintiff's treating doctors concluded and the Full Commission finds that the staph infection was the result of the scrape to plaintiff's right elbow while working for defendant-employer that allowed the infection to enter his body and spread through his bloodstream to his right knee. Plaintiff's pre-existing prepatellar bursitis contributed to the onset and spread of infection and increased the damage to the knee caused by the staph infection.

...

16. Plaintiff suffered an injury by accident on October 1, 1999 when he scraped his elbow on broken pieces of brick creating a portal for the staph infection which eventually infected plaintiff's knee. Although plaintiff frequently had scratches and scrapes while crawling under houses on the job, there is no evidence of record that any other scratches or scrapes became infected on previous occasions. Plaintiff's scraped elbow injury on October 1, 1999 followed by the invasion of the scratch by staph bacteria and resulting infections constituted an untoward or fortuitous event which was an interruption of plaintiff's work routine.

After a careful review of the record, we find that these findings of fact are supported by competent evidence in the record. Support for finding number four is contained in plaintiff's testimony. Plaintiff testified to the events of 1 October 1999, describing the work he performed

and how the brick pieces tore through his shirt and scraped his elbow. Also, plaintiff's wife, Robbie West (Mrs. West), in response to a question as to how her husband received the cut, testified "[f]rom crawling on his job."

Finding of fact number five pertains to both the extent of injury to the elbow and to how the infection reached plaintiff's knee. Again, plaintiff's testimony supports the portion of finding number five about the extent of injury to his elbow. Plaintiff testified as follows:

Well, it just tore through the shirt right there and sort of pulled -- put a little nasty place on [the right elbow]. And it swelled up in about three days and it was streaked right around my arm here and I showed it to several people there. And in about three days, it went down. I thought there wasn't no problem but in a few days, the knee surely told you that there was a problem.

In addition, Mrs. West testified to the extent of her husband's elbow injury by describing it in the following manner:

It was a -- a cut on his elbow and within a couple of days time, it was very red. I would describe it like a bee sting in sight. Have you ever seen a bee sting that swells up great big? It was red the whole diameter and kind of puffy.

Also, Thomas Lynn Gray, one of plaintiff's co-workers, testified to seeing plaintiff's injured elbow. He described the elbow as "all swole up and puffy the next day" and "skinned and swelled up."

The statements about the infection traveling from plaintiff's elbow to his knee are supported by testimony of Dr. Caffrey and Dr. Lavender, and by both the testimony and the notes of Dr. John F. Campbell (Dr. Campbell) and Dr. Truslow. Dr. Caffrey was asked about the nature of plaintiff's injury and he responded:

According to what the patient elaborated to me, he described to me an injury with his elbow where he struck his elbow.

And I did not have any hospital records, but what he described was a clinical course that was consistent with him getting systematically ill with a bacterial infection from that injury. That process likely having spread to his knee, leading to a bacterial infection of his knee, which Dr. Lavender performed arthroscopy on on 10-13-99.

Dr. Caffrey further testified that “[t]he infection, assuming it was caused by an injury, and then it definitely, I think, spread to his knee. There’s no question about that.” In addition, testimony by Dr. Lavender also supports the link between the elbow scrape and the knee infection. Dr. Lavender was presented with the facts of plaintiff’s case in a hypothetical question and was asked to assume that all facts were true. In response, Dr. Lavender testified that, “I think it was infection spread from his elbow by the bloodstream to his knee.” He further testified that the cause of the infection, which began in plaintiff’s elbow, was from “being scraped when he was working.” Dr. Campbell was presented with a similar hypothetical question and responded by stating, “I think that the cause was spread of infection from his right elbow through the bloodstream to the right knee.” Lastly, Dr. Truslow testified that plaintiff was at a higher risk of getting cuts and bruises, and stated that it “is well-known in medical literature” for portals of entry to not be the same location as the actual infection. He stated that “it’s [a] high probability” that plaintiff’s elbow was the entry point for the bacteria.

In addition to testimony, written notes support the link between plaintiff’s elbow injury and subsequent knee infection. Dr. Campbell, an infectious disease consultant, wrote the following note on 19 November 1999:

I recently helped care for Mr. West after he had developed a serious staph infection of his right knee. The apparent source of the staph infection was superficial infection of the right elbow and right knee which probably occurred as the result of his work. He frequently has to crawl under houses and this can lead to that type of chronic irritation that leads to infection in some people.

Similarly, Dr. Truslow explained in a note the care he had provided plaintiff for the knee infection:

A few days prior to his infection to his knee, he had what seems to be an infection to the right elbow which was improved by the time I saw him on 10/11/99.

It is my opinion that the likely source of his infection came during the time he was working and needing to be on his hands and knees on the ground.

The portion of finding of fact number sixteen that pertains to plaintiff suffering an “injury by accident” is also supported by competent evidence in the record. As stated above, an accident is not expected by the injured person and it interrupts the normal work routine. *Calderwood*, 135 N.C. App. at 115, 519 S.E.2d at 63. In the case before us, plaintiff’s testimony supports the assertion that suffering a scraped elbow was not a normal part of his job. For example, when asked if it was normal to get skinned elbows, plaintiff responded, “[n]ot normal. I wouldn’t say it’s normal.” Further, when asked how often he skinned his elbows, plaintiff testified that it did not happen even once a month. The questions continued and plaintiff repeatedly responded that skinned elbows were not a normal occurrence. He explained his position by saying, “[n]ot on my elbows because it’s always covered. Most of the time, it has to be something to tear through the shirt in order to tear up my elbow. . . . Normally, it would be on my hands where I get skinned.”

All of the above evidence is sufficient to support the challenged findings of fact. Further, these findings by the Commission support the conclusions of law that plaintiff suffered an injury by accident and that the staph infection was a natural and unavoidable consequence of that injury. Accordingly, defendants’ first argument is without merit.

II.

Defendants next argue that the Commission's award of benefits based on the occupational disease of bursitis is unsupported by competent evidence. Specifically, defendants dispute findings of fact numbers fourteen and fifteen and conclusion of law number three. The relevant portions of these provisions are as follows:

14. Plaintiff's pre-existing prepatellar bursitis contributed to the onset and spread of infection and increased the damage to the knee caused by the staph infection.

15. As a result of the trauma experienced by plaintiff crawling on his hands and knees, plaintiff contracted the occupational disease of bursitis due to intermittent pressure in the employment.

After a careful review of the record, we find that these findings of fact are supported by competent evidence in the record. In finding number fourteen, support for the assertion that bursitis contributed to the onset of infection is contained in several places. First, Dr. Lavender's partner, Dr. Wheatfield, made a note that stated plaintiff "[h]as evidence of olecranon bursitis [and] prepatellar bursitis [secondary] to work which could be initial site of infection." Similarly, Dr. Campbell's infectious disease report on 14 October 1999 notes that "[t]he olecranon or prepatellar bursitis may have been the source." Dr. Campbell also testified as to how trauma to the joint surfaces from crawling can lead to an abrasion over the joint surface. This abrasion can lead to a non-infectious bursitis, meaning the area around the joint becomes chronically inflamed. These things combine to help facilitate transmission of bacteria that is on a person's skin into the bursa then into the bloodstream.

There is also ample support for finding of fact number fifteen. For example, Dr. Lavender testified about the likely cause of plaintiff's olecranon and prepatellar bursitis by stating, "[a] history would be related to his statement he's on his knees and elbows every day." Dr. Lavender continued his testimony by agreeing that the bursitis observed in plaintiff "may well be" a

characteristic of individuals employed in a position similar to plaintiff's position. Dr. Lavender further testified that plaintiff's position as a sheet metal mechanic put plaintiff at an increased risk of developing olecranon and prepatellar bursitis. Additionally, Dr. Lavender responded to a question as to whether plaintiff's employment was a significant causal factor in plaintiff's development of bursitis by stating, "[b]y his history of his work status, I think so, yes."

Testimony by Dr. Campbell also supports finding of fact number fifteen. Dr. Campbell stated that he had "noted that [plaintiff] had resolving right olecranon bursitis" that "certainly could" have been caused by crawling. Dr. Campbell testified that the cause of plaintiff's bursitis was "[r]epetitive trauma over the surface of the elbow and the bursa" and it was caused by plaintiff's employment conditions. Dr. Truslow also testified to the causal link between plaintiff's employment as a sheet metal mechanic and his bursitis.

The above evidence is sufficient to support the challenged findings of fact. Further, these findings by the Commission support conclusion of law number three that because of plaintiff's employment, plaintiff did contract bursitis, an occupational disease. Accordingly, defendants' second argument is without merit.

III.

Defendants last argue that even if plaintiff has a compensable claim, the Commission's award of benefits for temporary partial or permanent partial disability is unsupported by competent evidence. Defendants assert that plaintiff's disability is not related to the infectious process in his right knee but rather to plaintiff's rheumatoid arthritis. Thus, defendants contest finding of fact number thirteen which states that plaintiff "retains a 20% permanent partial disability rating to his right leg as a result of his compensable injuries." Defendants similarly

contest the conclusions of law that plaintiff's disability is a "direct and proximate result of his compensable injuries."

There is competent evidence in the record to support the finding that plaintiff's disability is a result of his compensable knee infection. For example, Dr. Lavender testified that plaintiff's knee infection "involved the lining and it made it irritated and thickened in reaction to the infection." Dr. Lavender also testified that the internal derangement of plaintiff's knee was due to the initial infection. He reasoned that infections can weaken tissue and make it more susceptible to injury. Dr. Lavender further testified that plaintiff's tear of the medial meniscus in his right knee was also related to the infection. In addition, Dr. Caffrey testified that the decreased cartilage in plaintiff's knee was due both to the removal of his meniscus and his previous infection.

The above evidence is sufficient to support the challenged finding of fact. Further, this finding by the Commission supports conclusions of law five and six that plaintiff's disability is a "direct and proximate result of his compensable injuries." Defendants' third argument is without merit.

Affirmed.

Judges HUDSON and CALABRIA concur.

Report per Rule 30(e).