NO. COA02-1701

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2003

MORRIS CARLTON,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 988635

COASTAL ENTERPRISES, INC.,
Employer,

DENNIS INSURANCE GROUP,
Carrier,
Defendants.

Appeal by defendants from Amended Opinion and Award entered 14 October 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 6 October 2003.

Brumbaugh, Mu & King, P.A., by Kenneth W. King, Jr., for plaintiff-appellee.

Marshall, Williams & Gorham, L.L.P., by Ronald H. Woodruff, for defendants-appellants.

GEER, Judge.

Defendants Coastal Enterprises, Inc. ("Coastal") and Dennis Insurance Group have appealed from a decision of the North Carolina Industrial Commission awarding plaintiff temporary total disability benefits for a herniated disk. Defendants argue solely that the Commission erred in finding credible plaintiff's testimony regarding how his back injury

occurred. Because it is well-established that the Full Commission is the sole judge of credibility, we affirm.

In findings of fact to which defendants have not specifically assigned error, the Commission found as follows. Defendant Coastal provides cleaning services at various locations, including at the main commissary at Camp Lejeune. Plaintiff Morris Carlton, who is 48 years old, began working for Coastal on 17 April 1997 as a custodian.

Although Mr. Carlton was responsible for performing whatever cleaning activities were necessary, he spent a significant percentage of his time operating a buffing machine. The buffing machine was transported in a truck that had a hydraulic lift. The lift was raised and lowered mechanically, but employees first had to manually lower the upper edge of the lift so that it would stop in a horizontal position. The lift weighed in excess of 200 pounds.

On approximately 19 October 1999, Mr. Carlton and another employee were attempting to lower the lift with Mr. Carlton handling most of the weight of the lift to keep it from falling. While lowering the lift, he felt a strain or pull in his back followed by increasing soreness throughout the day.

Mr. Carlton sought treatment at the Onslow Memorial Hospital emergency room. The doctor's note for that visit states, "Injured low back lifting." Three days after visiting the emergency room, Mr. Carlton reported to his chiropractor that he had experienced a pull or strain while lowering a truck lift with a co-employee and that he had afterwards experienced increasing soreness. He gave essentially the same description of the cause of his injury to the insurance claims adjuster on 12 November 1999.

The Commission further found that plaintiff's injury was the direct result of a specific traumatic incident occurring on 19 October 1999. Noting that defendants did not contest the time

that plaintiff was out of work or medical causation, the Commission found that Mr. Carlton was totally disabled for certain specified periods. Based on these findings, the Commission concluded that plaintiff's back condition "was due to an injury by accident arising out of and in the course of his employment with defendant-employer, and was the direct result of a specific traumatic incident of the work assigned on or about October 19, 1999."

Defendants' sole argument on appeal _ that the Commission erred in crediting plaintiff's testimony _ is not an argument properly made to this Court. The assessment of a witness' credibility is the exclusive province of the Full Commission as finder of fact and may not be reviewed on appeal to this Court. *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116-17, 530 S.E.2d 549, 553 (2000). Since competent evidence in the form of plaintiff's testimony supports the Commission's finding of a work-related injury by accident, we affirm.

Affirmed.

Judges McGEE and HUDSON concur.

Report per Rule 30(e).