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NO. COA14-730
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

DERRICK JOHNSON,
Employee,
Plaintiff,

v.

From the North Carolina
Industrial Commission
I.C. No. 992368

CITY OF RALEIGH,
Employer,

and

NC LEAGUE OF MUNICIPALITIES,
Carrier,
Defendants.

Appeal by defendants and cross-appeal by plaintiff from
Opinion and Award entered 19 March 2014 by the North Carolina
Industrial Commission. Heard in the Court of Appeals 19
November 2014.

*Teague Campbell Dennis & Gorham, LLP, by Courtney C. Britt,
for defendant.*

*Hardison & Cochran, PLLC, by J. Jackson Hardison, for
plaintiff.*

DAVIS, Judge.

The City of Raleigh and the NC League of Municipalities (collectively "Defendants") appeal from the Opinion and Award of the North Carolina Industrial Commission ("the Commission") awarding Derrick Johnson ("Plaintiff") workers' compensation benefits for his depression. Plaintiff cross-appeals from the Opinion and Award of the Commission denying his workers' compensation claim against Defendants based upon his hypertension. The issues presented on appeal are whether the Commission erred in concluding that (1) Plaintiff's depression was causally related to his work-related injury and, therefore, compensable; and (2) Plaintiff's hypertension was not causally related to his work-related injury and, therefore, not compensable. After careful review, we affirm the Commission's Opinion and Award.

Factual Background

Plaintiff was an employee of the City of Raleigh in its Public Works Department at the time of his lower back injury on 18 June 2008. His duties included installing concrete curbing and sidewalks. On 18 June 2008, Plaintiff was shoveling dirt in preparation for the installation of curbing when he felt a pull in his groin and immediately thereafter felt pain in his back and a tingling sensation in his groin area. Plaintiff was diagnosed that same day with a back strain by Dr. Allen Mask ("Dr. Mask") at Raleigh Urgent Care. On 2 July 2008, Defendants

filed a Form 60 "Employer's Admission of Employee's Right to Compensation" in response to Plaintiff's submission of a Form 18 "Notice of Accident to Employer and Claim of Employee" concerning his back injury.

Dr. Mask referred Plaintiff to Dr. Robert Allen ("Dr. Allen") at Raleigh Neurosurgical Clinic. On 3 July 2008, Dr. Allen performed a right L4-5 partial hemilaminectomy and microdiscectomy on Plaintiff. Dr. Allen thereafter noted that Plaintiff still had some nerve root injury secondary to the original disc problem.

On 24 December 2008, Plaintiff was seen by Dr. Stephanie Brown ("Dr. Brown") who diagnosed him with hypertension. On 20 October 2009, Plaintiff was seen again by Dr. Brown who at that time diagnosed him with depression.

On 22 April 2010, at Defendants' request, Plaintiff underwent an evaluation at The Rehab Center in Charlotte, North Carolina. Plaintiff's treating physician at The Rehab Center was Dr. Kern Carlton ("Dr. Carlton"). Dr. Carlton diagnosed Plaintiff with "lumbar strain; status post right L4-5 partial hermilaminectomy [sic] and microdiscectomy; multilevel disc degeneration with epidural fibrosis and scarring with L3-4 and L5-S1 abnormalities lateralized toward the right and an L4-5 abnormality lateralized toward the left; depression; and hypertension."

On 14 September 2011, Plaintiff again presented to Dr. Brown complaining of depression. Dr. Brown noted that Plaintiff had experienced anger issues, crying spells, and suicidal thoughts. Dr. Brown ordered a mental health evaluation of Plaintiff, so Plaintiff was admitted to the emergency department at Franklinton Regional Medical Center for that purpose.

On 10 August 2011, Plaintiff filed a second Form 18 seeking workers' compensation benefits in connection with his 18 June 2008 injury. He subsequently filed a Form 33 request for a hearing, claiming that he was entitled to benefits regarding his inpatient psychiatric treatment for his depression on the ground that it was causally related to his 18 June 2008 work-related injury.

The matter was heard before Deputy Commissioner Chrystal Stanback on 23 August 2012. At the hearing, Defendants stipulated that Plaintiff's 18 June 2008 back injury was compensable but contested Plaintiff's claims based on his depression and hypertension. Following the hearing, the parties took several medical depositions, including those of Drs. Brown and Carlton.

In her deposition, Dr. Brown stated that Plaintiff was admitted to the Franklinton Regional Medical Center as a result of his depression. She further testified that she believed to a reasonable degree of medical certainty that Plaintiff's

depression was caused by his 18 June 2008 injury. Dr. Brown also stated that while Plaintiff's hypertension may have been partially caused by his work-related accident, she could not testify to a reasonable degree of medical certainty that the 18 June 2008 accident had caused his hypertension.

Dr. Carlton also opined that Plaintiff's 18 June 2008 work-related injury was the cause of his depression. However, later in his deposition, Dr. Carlton stated that "I would, you know, defer that to the psychiatrist who was treating him, who admitted him because it, you know, it was such a dramatic change from the way he had been before. So typically if the patient comes under the care of a psychiatrist then I - I defer those issues to them at that point." He further testified that he did not believe Plaintiff's hypertension was caused by his 18 June 2008 injury.

Deputy Commissioner Stanback filed an opinion and award on 31 May 2013 finding that Plaintiff's depression and hypertension were causally related to his 18 June 2008 injury. She determined that Plaintiff was therefore entitled to all medical expenses incurred, or to be incurred, as a result of the 18 June 2008 injury involving his lower back, including expenses related to his depression and hypertension.

Defendants appealed to the Full Commission. On 19 March 2014, the Commission issued an Opinion and Award, with one

commissioner dissenting, modifying Deputy Commissioner Stanback's opinion and award and concluding, in pertinent part, as follows:

6. The Full Commission concludes as a matter of law that plaintiff failed to meet his burden of proving that his hypertension was causally related to his work-related accident. . . . In the current matter . . . plaintiff does not provide an expert opinion stating that his hypertension is causally related to his work-related injury.

7. Based upon a preponderance of the evidence, including testimony by Dr. Brown, the Full Commission concludes as a matter of law that plaintiff has met his burden of proving his depression was a direct and natural result of his compensable back injury.

Defendants filed a timely notice of appeal to this Court challenging the Commission's determination that Plaintiff's depression was causally related to his 18 June 2008 injury. Plaintiff filed a cross-appeal contesting the Commission's determination that his hypertension was not caused by his work-related back injury.

Analysis

Our review of an Opinion and Award by the Commission is "limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law." *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008). The Commission's findings of fact are

conclusive on appeal if supported by competent evidence even if there is evidence to support contrary findings. *Avery v. Phelps Chevrolet*, 176 N.C. App. 347, 353, 626 S.E.2d 690, 694 (2006). On appeal, this Court will 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." *Smith v. Champion Int'l*, 134 N.C. App. 180, 182, 517 S.E.2d 164, 166 (1999) (citation and internal quotation marks omitted).

A work-related injury need not be the sole causative force to render an injury compensable. When a pre-existing, *non-disabling, non-job-related* condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment so that disability results, then the employer must compensate the employee for the entire resulting disability. This "aggravation rule" does not bar recovery if there is evidence of a causal connection between a claimant's current disability and a prior condition. It also does not require that claimant suffer from new or different symptoms from those of which he previously complained; rather, the claimant must only demonstrate that his work-related injury contributed in some reasonable degree to the disability.

Brafford v. Brafford's Const. Co., 125 N.C. App. 643, 646-47, 482 S.E.2d 34, 37 (1997) (internal citations, quotation marks, and ellipses omitted).

When the Commission relies on expert medical testimony, the expert's testimony "must be such as to take the case out of the

realm of conjecture and remote possibility" in order to constitute competent evidence of a causal relationship between the work-related accident and the injury. *Rogers v. Lowe's Home Improvement*, 169 N.C. App. 759, 765, 612 S.E.2d 143, 147 (2005) (citation and internal quotation marks omitted). Moreover, a medical expert

[s]tating an accident "could or might" have caused an injury, or "possibly" caused it is not generally enough alone to prove medical causation; however, supplementing that opinion with statements that something "more than likely" caused an injury or that the witness is satisfied to a "reasonable degree of medical certainty" has been considered sufficient.

Carr v. Dep't of Health & Human Servs., 218 N.C. App. 151, 155, 720 S.E.2d 869, 873 (2012).

I. Defendants' Appeal

Defendants' sole argument on appeal is that the Commission erred in concluding that Plaintiff's depression was causally related to his 18 June 2008 work-related injury. Specifically, Defendants argue that the pertinent expert medical testimony relied upon by the Commission in reaching this conclusion was based solely upon the *post hoc, ergo propter hoc* logical fallacy. We disagree.

The maxim "*post hoc, ergo propter hoc*," denotes the fallacy of confusing sequence with consequence, and assumes a false connection between causation and temporal sequence. As such, this Court has treated the maxim as inconclusive as to proximate

cause. . . . In a case where the threshold question is the cause of a controversial medical condition, the maxim of "*post hoc, ergo propter hoc*," is not competent evidence of causation.

Young v. Hickory Bus. Furn., 353 N.C. 227, 232, 538 S.E.2d 912, 916 (2000) (internal citations, quotation marks, and ellipses omitted).

In the present case, Dr. Brown testified as follows:

Q. In your opinion – is it your opinion that [Plaintiff's] depression was caused by his back injury, back pain and the limiting effect it had on him physically?

[Defendants' counsel]: Objection.

Q. You could answer.

A. Yes.

Q. Is that your opinion to a reasonable degree of medical certainty?

A. Yes.

. . . .

Q. And are your opinions that you expressed based on a combination of your evaluations and interviews of [Plaintiff], his reports to you, all of the subjective testing and films, your subjective physical examinations and your experience treating other patients?

[Defendants' counsel]: Objection.

A. Yes.

We believe this testimony is sufficient to support the Commission's determination in finding of fact 38 that

Dr. Brown opined within a reasonable degree of medical certainty that plaintiff's depression was caused by his back injury, back pain and physical limitations resulting from the 18 June 2008 compensable workplace injury. Based on Dr. Brown's testimony and the greater weight of the evidence of record, the Full Commission finds that plaintiff's depression was caused by the 18 June 2008 injury by accident.

In *Young*, upon which Defendants primarily rely, our Supreme Court held that a doctor's opinion finding the evidence of a causal relationship between the plaintiff's fibromyalgia and her work-related back injury was solely based upon *post hoc, ergo propter hoc* reasoning.

[The doctor's] total reliance on this premise is shown near the end of his deposition testimony wherein he states: "I think that she does have fibromyalgia and I relate it to the accident primarily because, as I noted, it was not there before and she developed it afterwards. And that's the *only* piece of information that relates the two." . . . [W]e conclude that [the doctor's] testimony, throughout both direct and cross-examination, consists of comments and responses demonstrating his inability to express an opinion to *any* degree of medical certainty as to the cause of Ms. Young's illness. [The doctor's] responses were forthright and candid, and demonstrated an opinion based *solely* on supposition and conjecture. We therefore hold that this evidence, the *sole* evidence as to causation, was incompetent and insufficient to support the Industrial Commission's findings of fact.

Young, 353 N.C. at 232-33, 538 S.E.2d at 916-17 (emphasis added).

However, in our subsequent caselaw applying *Young*, we have held that where a medical expert relies upon something more than mere temporal sequence, a *post hoc, ergo propter hoc* issue does not exist. See *Kelly v. Duke Univ.*, 190 N.C. App. 733, 740, 661 S.E.2d 745, 749 (2008) (“[Doctor’s] opinion was based not only on the temporal sequence of events, but also on statistical information and [her] knowledge of the history of decedent’s condition. We therefore conclude that there is competent evidence in the record to support the Commission’s finding that decedent’s death was proximately caused by her compensable occupational disease.”), *disc. review denied*, 363 N.C. 128, 675 S.E.2d 367 (2009); see also *Carr*, 218 N.C. App. at 156, 720 S.E.2d at 874 (“[Doctor’s] opinion, however, was based on more than merely the sequence of events. In his deposition, [Doctor] stated that although ‘a lot of it is based on timing,’ his opinion was based on the mechanism of injury as well as the temporal relationship between the incident and symptoms.”).

In the present case, Dr. Brown’s opinion similarly did not rely merely upon the existence of a temporal sequence. Rather, her testimony makes clear that her opinion was also based upon “a combination of [her] evaluations and interviews of [Plaintiff], [Plaintiff’s] reports to [her], all of the subjective testing and films, [her] subjective physical examinations and [her] experience treating other patients[.]”

Therefore, Defendants' contention that Dr. Brown relied solely on *post hoc, ergo propter hoc* reasoning in diagnosing Plaintiff with depression arising out of his work-related injury is without merit. Consequently, Defendants' argument on this issue is overruled.

II. Plaintiff's Cross-Appeal

In his cross-appeal, Plaintiff contends that the Commission erred in finding that his hypertension was not causally related to his 18 June 2008 injury. We disagree.

Plaintiff does not specifically challenge any of the Commission's findings of fact. It is well-settled that "[u]nchallenged findings of fact [made by the Industrial Commission] are presumed to be supported by competent evidence and are binding on appeal." *Allred v. Exceptional Landscapes, Inc.*, __ N.C. App. __, __, 743 S.E.2d 48, 51 (2013).

In the present case, the Commission made the following pertinent findings of fact:

33. Dr. Brown . . . testified that she believed that the pain from plaintiff's work-related injury was one cause of plaintiff's hypertension but she could not opine that it was the only cause of plaintiff's high blood pressure. She further stated that pain normally causes periodic spikes in blood pressure not hypertension.

34. Dr. Carlton . . . testified that he did not believe that plaintiff's hypertension was caused by his work-related injury.

35. The Full Commission finds as fact, based on the testimony of Dr. Carlton, that plaintiff's hypertension was not caused by the 18 June 2008 workplace accident.

36. The Full Commission finds as fact that Dr. Brown testified that pain normally causes periodic spikes in blood pressure, not hypertension[.]

37. The Full Commission finds as fact, based on a preponderance of the evidence, that plaintiff's hypertension is not causally related to his work-related accident[.]

These findings of fact support the Commission's conclusion that Plaintiff's hypertension was not causally related to his 18 June 2008 work-related injury. Dr. Carlton's testimony constituted competent evidence upon which the Commission was entitled to rely in making its determination on this issue. Therefore, Plaintiff's argument is without merit.

Conclusion

For the reasons stated above, the Commission's Opinion and Award is affirmed.

AFFIRMED.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).