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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-642

Filed: 21 April 2015

From the North Carolina Industrial Commission, I.C. No. X54689

RANDY O. COLLINS, Employee, Plaintiff,

v.

SEATON CORPORATION, Employer, SELF-INSURED (GALLAGHER BASSETT SERVICES, Administrator), Defendants.

Appeal by plaintiff from an opinion and award entered 2 January 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 4 November 2014.

Jason G. Goins for employee, plaintiff.

Young Moore and Henderson P.A., by Brodie D. Erwin and Jeffrey T. Linder, for employer and administrator, defendants.

McCULLOUGH, Judge.

Randy O. Collins (“plaintiff”) appeals from an opinion and award of the North Carolina Industrial Commission (the “Commission”) in favor of Seaton Corporation (“employer”) and Gallagher Bassett Services (together “defendants”). For the following reasons, we affirm.

I. Background

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Plaintiff initiated this workers' compensation action against defendants by filing a Form 18 "Notice of Accident to Employer and Claim of Employee, Representative, or Dependent." In the Form 18, plaintiff alleged he suffered a lower back injury on 6 June 2011 as he was training to be a machine operator for employer. Specifically, plaintiff indicated he picked up a box of materials and stepped on a dolly which rolled out from underneath him, causing him to go down into a split.

Defendants responded to plaintiff's Form 18 by filing a Form 61 "Denial of Workers' Compensation Claim." Defendants denied plaintiff's claim on the basis that plaintiff's alleged injury did not occur in the course and scope of employment.

On 31 October 2011, plaintiff filed a Form 33 "Request that Claim be Assigned for Hearing." After several continuances due to plaintiff's incarceration out of state, plaintiff's claim came on for hearing in Greensboro before Deputy Commissioner Bradley W. Houser on 26 October 2012. Following the hearing, the record remained open to permit the parties to submit depositions and additional documentary evidence. The record was later closed by order filed 28 March 2013.

On 24 April 2013, the Deputy Commissioner filed an opinion and award in which he concluded "[o]n 6 June 2011, plaintiff sustained an injury by accident arising out of and in the course and scope of his employment with defendant-employer[]" and, "as the result of his 6 June 2011 injury by accident[,] plaintiff is entitled to be paid by defendants temporary total disability compensation . . . from

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that date until the date of his termination[]” and “plaintiff is entitled to have defendants pay for all related medical expenses incurred or to be incurred[.]” Both plaintiff and defendants appealed to the Full Commission.

Following a review of the matter on 25 October 2013, the Commission filed an opinion and award on 2 January 2014 reversing the Deputy Commissioner’s award. Specifically, upon reconsideration of the evidence, the Commission found that the doctor’s “causation opinion . . . was based upon [p]laintiff’s description of the injury[.]” which the Commission found “to be not credible based on the inconsistencies in the record, the investigatory findings of Ms. Quigley and Ms. Ibrahim, and the medical records.” As a result, the Commission gave no weight to plaintiff’s testimony and accorded little weight to the opinion of the doctor. The Commission then concluded that the doctor’s “testimony [was] insufficiently reliable to qualify as competent evidence concerning the nature and cause of [plaintiff’s] injury” and plaintiff “failed to prove that he sustained an injury by accident or specific traumatic incident to his back on June 6, 2011.”

Plaintiff gave notice of appeal to this Court from the Commission’s 2 January 2014 opinion and award on 29 January 2014.

II. Discussion

Review of an opinion and award of the Commission “is limited to consideration of whether competent evidence supports the Commission’s findings of fact and

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whether the findings support the Commission's conclusions of law. This 'court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.' ” *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citation omitted) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)).

In a worker's compensation action, the employee bears the burden of proving his claim is compensable by a preponderance of the evidence. *See Holley v. ACTS, Inc.*, 357 N.C. 228, 231–32, 581 S.E.2d 750, 752 (2003). Thus, plaintiff bore the burden in this case to prove that he sustained an “injury by accident arising out of and in the course of [his] employment” or that his injury “[arose] out of and in the course of [his] employment and is the direct result of a specific traumatic incident of the work assigned[.]” N.C. Gen. Stat. § 97-2(6) (2013); *see also Fish v. Steelcase, Inc.*, 116 N.C. App. 703, 707, 449 S.E.2d 233, 237 (1994).

Upon reconsideration of the evidence in this case, and after making various findings based on the evidence, the Commission issued the following two determinative findings of fact:

35. Based upon a preponderance of the evidence of record, the Full Commission finds that [p]laintiff did not sustain an injury by accident or specific traumatic incident resulting in a compensable injury to his back at work on June 6, 2011.

36. Based upon a preponderance of the evidence of record, the Full Commission finds that insufficient

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evidence exists to determine that [p]laintiff's complaints of back pain are causally related to any compensable event at work that occurred on June 6, 2011.

Now on appeal, plaintiff argues the Commission erred by finding "[he] did not sustain an injury by accident or specific traumatic incident resulting in a compensable injury to his back at work on June 6, 2011." Plaintiff adamantly maintains he was injured while working for defendant on 6 June 2011 and asserts he met his burden of proving a compensable back injury. In support of his claim, plaintiff points to evidence from Dr. Betty Bradley, who initially treated plaintiff in urgent care following the alleged incident, and Dr. Mark Yates, who performed an independent medical examination of plaintiff months later, concerning plaintiff's back pain following the alleged incident and plaintiff's need for ongoing therapy and treatment. Plaintiff contends the Commission ignored this evidence in reaching its decision, constituting error. Plaintiff further argues the Commission's findings and conclusions failed to account for what he claims was defendants' indifference to his medical needs when defendants denied his claim following the doctors' recommendations for further examinations.

Upon review of the evidence and the 2 January 2014 opinion and award, we find no merit to plaintiff's arguments.

Plaintiff is correct that the Commission "may not wholly disregard competent evidence." *Harrell v. J.P. Stevens & Co., Inc.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (1980). However, "[t]he Commission is the sole judge of the credibility of the

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witnesses and the weight to be given their testimony.” *Anderson*, 265 N.C. at 433-34, 144 S.E.2d at 274. Thus, “[t]he Commission may accept or reject the testimony of a witness solely on the basis of whether it believes the witness or not.” *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 684 (1982).

It is evident from the Commissions’ numerous findings concerning Dr. Bradley’s and Dr. Yate’s diagnosis and treatment of plaintiff’s back pain that the Commission considered the evidence of back pain noted by plaintiff. Yet, it is further evident from a review of the opinion and award that the Commission’s denial of plaintiff’s claim was based on the Commission’s findings that plaintiff “did not sustain an injury by accident or specific traumatic incident resulting in a compensable injury to his back at work on June 6, 2011[]” and “insufficient evidence exists to determine that [p]laintiff’s complaints of back pain are causally related to any compensable event at work that occurred on June 6, 2011.”

The Commission issued these conclusory findings upon finding in finding number 33 that “[p]laintiff’s testimony regarding the June 6, 2011 alleged incident [was] not credible based on the inconsistencies in the record, the investigatory findings of Ms. Quigley and Ms. Ibrahim, and the medical records.” These inconsistencies are evidenced by various Commission findings, including the following:

6. Ms. Ibrahim described the collectors as being round, which causes them to roll when spilled. Ms. Ibrahim

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testified that if someone had fallen while carrying a full bin, there would have been collectors throughout the area. Ms. Ibrahim further testified that when a bin of collectors is dropped, it requires the use of a magnet to retrieve them. According to Ms. Ibrahim, had Plaintiff spilled collectors at the time of the alleged incident, he would have had to pick them up with a magnet within the ten to fifteen (10-15) minutes prior to her arriving at the scene. During her investigation Ms. Ibrahim noted that there were no collectors on the floor where Plaintiff allegedly fell.

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12. The records from the July 13, 2011 visit also reflect that Plaintiff experienced a syncope episode on July 11, 2011 where he "fainted in shower from severe episode of pain" and presented to the emergency room. As the result of this incident, Plaintiff injured his back, head, and leg. Plaintiff's medical records indicate that he has a history of syncope episodes and that he had four documented syncope episodes during the period of 2002 to 2008.

....

18. Upon notification of the alleged June 6, 2011 incident, Ms. Quigley began an investigation as part of her job duties. Ms. Ibrahim also participated in the investigation. As part of the investigation into the alleged incident, Ms. Quigley and Ms. Ibrahim determined that there were no witnesses to Plaintiff's alleged accident, even though numerous individuals worked in the general vicinity.

....

24. Plaintiff denied experiencing back pain prior to June 6, 2011 and denied having sustained any low back injuries that required medical treatment during the prior ten (10) year period in Defendants' First Set of

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Interrogatories and at the hearing before the Deputy Commissioner; however, Plaintiffs medical records from Indiana reflect that he had sustained several injuries to his back that required medical treatment during the prior ten (10) years.

....

31. Despite Plaintiff's testimony on October 26, 2012 that his attempt to return to automotive work was unsuccessful due to his back pain, the records from the November 7, 2012 visit with Dr. Yates reflect that Plaintiff had "evidence on his hands today that he has actually been working on some motors and states he had changed some oil or transmission fluid recently." Dr. Yates further testified that Plaintiff should be able to work in a sedentary duty capacity, at a minimum, "since he was working on engines at the time when I saw him that one day."

Furthermore, because the Commission found plaintiff's testimony about the incident not credible, it also found in finding number 34 that it

accorded little weight to the opinion of Dr. Yates as he specifically testified that his opinion was based on [p]laintiff's account of the injury Further, Dr. Yates testified at his deposition that [p]laintiff "had some evidence of symptom magnification, and his exam showed some inconsistencies." Dr. Yates further explained that [p]laintiff "had multiple findings that don't make sense."

On appeal, it is not this Court's duty to second guess the Commission's determinations on the credibility of the witnesses or to reweigh the evidence.

Although the evidence from plaintiff and his doctors indicated plaintiff suffered back pain following the alleged workplace incident on 6 June 2011, the Full Commission properly considered and weighed the evidence and determined plaintiff's

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account of his injury was unreliable. Where the only evidence of a workplace incident on 6 June 2011 was plaintiff's own testimony, which the Commission determined was not credible and gave no weight, and where the only medical opinion regarding the nature and cause of plaintiff's injury was based solely on plaintiff's account of the alleged incident, we hold the Commission did not err denying plaintiff's claim on the basis that plaintiff "failed to prove that he sustained an injury by accident or specific traumatic incident to his back on June 6, 2011."

III. Conclusion

For the reasons discussed, we affirm the Commission's denial of plaintiff's worker's compensation claim.

AFFIRMED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).