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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1060

Filed: 15 May 2018

North Carolina Industrial Commission, I.C. No. X86647

ANTHONY DOUGLAS PRYOR, SR., Employee, Plaintiff,

v.

EXPRESS SERVICES, Employer, SEDGWICK CMS, Carrier, Defendants.

Appeal by Plaintiff from opinion and award entered 10 August 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 6 March 2018.

Wallace and Graham, P.A., by Edward L. Pauley, for the Plaintiff-Appellant.

Rudisill, White & Kaplan, P.L.L.C., by Stephen Kushner, for the Defendants-Appellees.

DILLON, Judge.

Anthony D. Pryor (“Mr. Pryor”) appeals from an opinion and award of the North Carolina Industrial Commission denying his workers’ compensation claim. After careful review, we affirm.

I. Background

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Mr. Pryor worked as a welder for various companies from 1997 to 2008. Throughout his career, Mr. Pryor primarily performed “mig” or “mag” welding, which is known to produce large volumes of fumes and smoke.

In 2009, Mr. Pryor was diagnosed with chronic obstructive pulmonary disease (“COPD”) and pulmonary impairment. Mr. Pryor’s treating physician told him that welding fumes had caused or contributed to his development of COPD. Mr. Pryor applied for Social Security disability benefits based on his numerous health issues, including respiratory problems. The decision from the Social Security Administration noted that Mr. Pryor had several “severe impairments,” including restrictive lung disease, asthma and sleep apnea. Mr. Pryor was awarded Social Security benefits beginning in May 2010.

In 2010, Mr. Pryor worked for a temporary staffing agency, Express Services, Inc., performing work for a conveyer company where eighty percent (80%) of his workday was spent welding. Mr. Pryor’s assignment with Express Services lasted approximately 18 days over a period of four weeks.

In January 2011, Mr. Pryor filed a claim with the Industrial Commission against several past employers for compensation for his COPD due to exposure to welding fumes and dust. All the named Defendants *except for* Express Services eventually settled with Mr. Pryor.

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In early 2016, Mr. Pryor’s claim against Express Services was denied after a hearing before a deputy commissioner. Mr. Pryor appealed to the Full Commission, which affirmed the deputy commissioner’s denial of his claim. Mr. Pryor timely appealed the opinion and award of the Full Commission to our Court.

II. Standard of Review

On appeal from an opinion and award of the Industrial Commission, our review is limited to determining “whether any competent evidence supports the Commission’s findings of fact and whether [those] findings . . . support the Commission’s conclusions of law.” *Frost v. Salter Path Fire & Rescue*, 361 N.C. 181, 183, 639 S.E.2d 429, 432 (2007).

The “Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.” *Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998). Our Court’s “duty goes no further than to determine whether the record contains any evidence tending to support [a challenged] finding.” *Anderson v. Lincoln Const. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965).

III. Analysis

Mr. Pryor essentially makes two arguments on appeal, which we address in turn.

Mr. Pryor first argues that the Commission relied upon incompetent evidence in making finding of fact 18, which addressed a doctor’s testimony that welding fumes

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and smoke did not cause or contribute to Mr. Pryor's development of COPD. Finding of fact 18 is a summary of expert testimony offered by Express Services' expert, Dr. Spangenthal. Based on the expert's testimony, the Commission found as follows:

. . . Dr. Spangenthal testified that [Mr. Pryor] "probably had some degree and some element of COPD secondary to the longstanding cigarette abuse[.]" When asked if [Mr. Pryor's] work as a welder played a role in the development or aggravation of his breathing problems, Mr. Spangenthal testified: "It didn't – in my opinion, it does not play any role in his symptoms." . . . "[M]y diagnosis would be COPD secondary to his cigarette abuse and that welding if it played any role, it would have played a minor role in where he stands at the moment."

. . . .

While Dr. Spangenthal testified that welding fumes can be an irritant for someone with pre-existing COPD, his testimony does not support a finding that [Mr. Pryor's] employment placed him at an increased risk of developing lung disease as compared to members of the general public not so employed.

Mr. Pryor contends that the evidence supporting this finding was incompetent because Dr. Spangenthal later recanted his testimony on cross-examination. We disagree. The record shows that in response to several studies presented by Mr. Pryor's counsel, Dr. Spangenthal acknowledged that long-term exposure to welding dust and fumes would "cause a certain degree of lung dysfunction." Dr. Spangenthal said nothing which tended to contradict his testimony regarding Mr. Pryor's condition, specifically. In any event, it is the role of the Commission to resolve these

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discrepancies. *See Adams*, 349 N.C. at 681, 509 S.E.2d at 414. It is not the role of the appellate courts to re-weigh the evidence presented to the Commission. *See Blalock v. City of Durham*, 244 N.C. 208, 212, 92 S.E.2d 758, 760 (1956) (“[I]f there is any competent evidence to support a finding of fact of the Industrial Commission, such finding is conclusive on appeal, even though there is evidence that would support a finding to the contrary.”).

In his second argument, Mr. Pryor challenges several additional findings of fact from the Commission’s opinion and award. In his challenges to these findings, Mr. Pryor again asks our Court to re-weigh the evidence and to question the Commission’s decision to make findings regarding certain evidence introduced at the hearing, while refraining from making findings regarding other competent evidence. Mr. Pryor also argues, once again, that the Commission failed to mention that Dr. Spangenthal “recanted” his testimony.

After thorough review of the Commission’s findings, which span approximately nine pages, we conclude that each finding challenged by Mr. Pryor was supported by competent evidence introduced at the hearing. *See Frost*, 361 N.C. at 183, 639 S.E.2d at 432. The findings were certainly sufficient to support the Commission’s conclusions of law. *See id.* Additionally, we note that the Commission is not required to make findings addressing every single piece of evidence introduced – this would be an almost impossible burden. *See Deese v. Champion Int’l Corp.*, 352 N.C. 109, 116,

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530 S.E.2d 549, 553 (2000) (“[T]he Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible.”). Accordingly, we affirm the Commission’s opinion and award denying Mr. Pryor’s claim.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).