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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-951

Filed: 16 May 2017

North Carolina Industrial Commission, No. 377113

JOHNNY R. EDWARDS, Employee, Plaintiff,

v.

PCC AIRFOILS, Employer, SELF-INSURED (UNDERWRITERS SAFETY & CLAIMS, Servicing Agent), Defendant.

Appeal by plaintiff from opinion and award entered 28 April 2016 by the North Carolina Industrial Commission. Heard in the Court of Appeals 5 April 2017.

Law Office of Gregory M. Kash, by Gregory M. Kash, for plaintiff-appellant.

Hedrick Gardner Kincheloe & Garofalo, LLP, by M. Duane Jones and Shannon P. Metcalf, and Ross Burris & Handelman, LLC, by Todd Handelman, pro hac vice, for defendants-appellees.

DIETZ, Judge.

Plaintiff Johnny Edwards appeals the denial of his request for additional workers' compensation benefits. For a number of years, Edwards has suffered injuries from stumbling or falling as a result of syncope, a temporary loss of consciousness. Edwards contends that his syncope is related to a decade-old head injury he suffered while working for Defendant PCC Airfoils.

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As explained below, we reject Edwards’s arguments on appeal. The Industrial Commission’s finding that Edwards’s injuries “were either feigned, factitious, or caused by a reason unrelated to the compensable injury” is supported by at least some competent evidence in the record, and that finding, in turn, supports the Commission’s conclusion that Edwards does not have any ongoing disability. We also reject Edwards’s challenge to the testimony of one of the expert witnesses in this case. Edwards failed to secure a ruling on that objection and, under well-settled precedent from this Court, we cannot review a challenge to expert testimony unless the complaining party objects *and* secures a ruling on that objection in the trial tribunal. We therefore affirm the Commission’s opinion and award.

Facts and Procedural History

In 2003, Plaintiff Johnny Edwards slipped on some hydraulic fluid at work and hurt his head. His employer, PCC Airfoils, admitted that Edwards’s injury was compensable under the Workers’ Compensation Act.

In the years after his workplace injury, Edwards suffered debilitating migraines that led to syncope—a temporary loss of consciousness—which in turn caused Edwards to fall and suffer a variety of injuries ranging from broken teeth to memory loss.

In 2013, a decade after his initial head injury, Edwards filed a request for additional workers’ compensation benefits to provide attendant care, counseling for

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depression, and treatment for various injuries that Edwards suffered as a result of his falls. PCC Airfoils disputed Edwards's claim that his falls and resulting injuries were related to his decade-old workplace injury.

Both parties presented evidence from medical professionals concerning Edwards's condition. Relevant to this appeal, PCC Airfoils presented testimony from Dr. Manish Fozdar, a neuropsychiatrist specializing in behavioral neurology, who examined Edwards. Dr. Fozdar testified that he believed Edwards's syncopal falls could not be attributed to his workplace injury; that Edwards's exaggerated symptoms suggested Edwards was malingering; and that the medical care Edwards had received over the years for his headaches and related issues were unrelated to his initial workplace injury.

In its opinion and award, the Full Commission relied heavily on Dr. Fozdar's testimony in its findings that Edwards's ongoing medical issues were unrelated to his initial workplace injury. Based on those findings, the Commission concluded that Edwards had not established any ongoing disability and thus was not entitled to further workers' compensation benefits. Edwards timely appealed.

Analysis

I. Challenge to the Commission’s Conclusions

Edwards first argues that the Commission erred by concluding that his loss of consciousness, falls, and resulting injuries were unrelated to his workplace head injury a decade earlier. As explained below, we reject Edwards’s argument.

This case involves an aspect of workers’ compensation law known as the “*Parsons* presumption.” That presumption provides that, when a workers’ compensation claim is proven compensable, the law creates a presumption that any additional medical treatment the employee later undertakes is directly related to the initial, compensable injury. *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 542, 485 S.E.2d 867, 869 (1997). The employer may rebut this presumption with evidence that the additional medical treatment is not directly related to the compensable injury. *Perez v. Am. Airlines/AMR Corp.*, 174 N.C. App. 128, 135-36, 620 S.E.2d 288, 292-93 (2005).

Here, the Commission concluded that Edwards’s falls and corresponding injuries were not related to his initial workplace head injury a decade earlier. The Commission based that conclusion on its finding that Edwards’s various falls and related injuries “were either feigned, factitious, or caused by a reason unrelated to the compensable injury.” Edwards makes two flawed arguments challenging these findings and conclusions.

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First, Edwards contends that the Commission's opinion and award improperly set aside PCC Airfoils's admission of compensability. This is a strawman. The Commission did not set aside the initial admission of compensability; it concluded that Edwards's falls and injuries a decade later were unrelated to that initial injury. Thus, Edwards's lengthy discussion of the legal standard for setting aside an admission of compensability is misplaced. This case concerns the *Parsons* presumption, not the withdrawal of the initial admission of compensability. *See id.* at 135-36, 620 S.E.2d at 292-93.

Second, Edwards argues "that overwhelming evidence, even the evidence educed from Defendant's expert Dr. Brigidi, establishes that the Plaintiff has a number of continuing medical problems associated with his head." In other words, Edwards argues that the evidence (in his view) shows that his falls and injuries *are* directly related to his initial head injury in 2003. This argument fails because it ignores the applicable standard of review.

Under the competent evidence standard, this Court must uphold the Commission's findings of fact if there is *any* competent evidence to support them, "even if there is plenary evidence for contrary findings." *Hardin v. Motor Panels, Inc.*, 136 N.C. App. 351, 353, 524 S.E.2d 368, 371 (2000). Here, there is ample competent evidence supporting the Commission's finding that Edwards's falls and related injuries "were either feigned, factitious, or caused by a reason unrelated to the

compensable injury.” To be sure, most of that evidence came from Dr. Fozdar, whom Edwards contends was not qualified to give expert testimony. But as explained in Part II below, we reject Edwards’s challenge to the admission of Dr. Fozdar’s testimony. Simply put, there is at least some competent evidence to support the Commission’s finding (even though there is ample evidence that could support contrary findings as well). Accordingly, we must uphold the Commission’s finding, which in turn support the Commission’s conclusion of law.¹

II. Challenge to Dr. Fozdar’s Expert Testimony

Edwards next argues that the Commission erred by admitting Dr. Fozdar’s expert testimony. Edwards contends that Dr. Fozdar was not qualified to testify as an expert in behavioral neurology and, as a result, his testimony should have been excluded. As explained below, Edwards never secured a ruling on this purported objection, and this argument is therefore waived on appeal.

Our review of this issue is controlled by *Boylan v. Verizon Wireless*, 224 N.C. App. 436, 442, 736 S.E.2d 773, 777 (2012). In *Boylan*, this Court held that a party who *objects* to expert testimony before the Commission, but who fails to secure a

¹ Edwards also challenges the Commission’s failure to make findings concerning the “tilt table” test results by one of his treating physicians, Dr. J. Mark Englehardt. It is well-settled that the Commission is not required to make findings of fact on every detail of the evidence presented at the hearing. *Gregory v. W.A. Brown & Sons*, 363 N.C. 750, 761, 688 S.E.2d 431, 439 (2010). The Commission need only make “specific findings of fact” as to “the crucial questions of fact upon which plaintiff’s right of compensation depends.” *Id.* The Commission did so in this case, and we thus reject Edwards’s argument.

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ruling on that objection, waives the issue on appeal. *Boylan*, 224 N.C. App. at 442, 736 S.E.2d at 777. The Court reasoned that, because Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure requires the complaining party “to obtain a ruling upon the party’s request, objection, or motion” in order to pursue the issue on appeal, it is not enough for a party simply to object to purported expert testimony. *Id.* Instead, that party must raise the issue with the Commission and obtain a ruling that includes the reason why the challenged testimony is admissible or inadmissible. *Id.*

We are unable to distinguish this case from *Boylan*. At Dr. Fozdar’s deposition, Edwards objected to his qualification as an expert in behavioral neurology. But the record does not contain any indication that Edwards raised this objection with the Commission or obtained any ruling by the Commission on that objection. Thus, under *Boylan*, Edwards’s objection to Dr. Fozdar’s expert testimony is not preserved for appellate review and we may not consider it.

Conclusion

We affirm the Commission’s opinion and award.

AFFIRMED.

Judges CALABRIA and BERGER concur.

Report per Rule 30(e).