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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-491

Filed: 2 January 2018

North Carolina Industrial Commission, I.C. Nos. 15-720512, 15-757100

KEVIN TERRY, Employee, Plaintiff,

v.

HARRIS TEETER SUPERMARKETS, INC., Employer, SELF-INSURED (GALLAGHER BASSET SERVICES, INC., Third-Party Administrator), Defendants.

Appeal by plaintiff from opinion and award entered 6 March 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 October 2017.

The Bollinger Law Firm, PC, by Bobby L. Bollinger, Jr., for plaintiff-appellant.

Golding, Holden & Pope, LLP, by Edward A. Sweeney, for defendants-appellees.

DIETZ, Judge.

Plaintiff Kevin Terry challenges the denial of his request for workers' compensation for an alleged occupational disease. Terry works as a meat cutter at a Harris Teeter supermarket and suffers from Guillain-Barre syndrome, a rare condition that prevents him from sensing cold in his extremities. Terry's condition existed before he began work as a meat cutter. Terry later developed severe injuries

to his fingers after repeatedly picking up frozen meats and other cold items while on the job.

Before the Industrial Commission, Terry's treating physician testified that he believed "a butcher at Harris Teeter who doesn't have Guillain-Barre wouldn't have this happen to him" and that "but for that Guillain-Barre it was more likely than not that Mr. Terry would not have developed this condition."

As explained below, although we recognize there was at least some contradictory evidence before the Commission, this testimony is competent evidence that supports the Commission's findings and corresponding conclusions that Terry did not suffer from an occupational disease as that term is defined in the Workers' Compensation Act. The Commission properly determined, based on its findings, that Terry did not suffer from a disease "due to causes and conditions which are characteristic of and peculiar to" his occupation. N.C. Gen. Stat. § 97-53(13). Accordingly, we affirm the Commission's opinion and award.

Facts and Procedural History

Plaintiff Kevin Terry has worked for Defendant Harris Teeter since 2008 and has worked in his current position as a meat cutter since 2013. Terry's job as a meat cutter involves working in a cold environment and frequently handling cold and frozen items.

Terry was diagnosed with Guillain-Barre syndrome in 1998. Guillain-Barre is a rare medical condition that affects the nervous system and, in Terry's case, prevents him from sensing cold in his extremities. Terry testified that he handled cold items at work for longer periods of time and more frequently than others in his position because he could not feel the cold in his hands.

In 2015, Terry filed workers' compensation claims for injuries to his fingers, including frostbite and severe infections, that occurred in the preceding few years. Terry contended that his injuries were an occupational disease caused by his work handling frozen items as a meat cutter.

Dr. Smiresh Shah testified that he treated Terry in 2015 when Terry presented with an open wound and a severe bone infection called osteomyelitis in his right middle finger. Dr. Shah testified that Terry had a history of Guillain-Barre syndrome, which caused him to have decreased sensitivity to cold in his hands. Dr. Shah stated that it is possible that another worker in Terry's position without Guillain-Barre syndrome could develop the same problems as Terry, but it was less likely. When asked if he would agree that "a butcher at Harris Teeter who doesn't have Guillain-Barre wouldn't have this happen to him, that it was Mr. Terry's peculiar condition [that] made him much more susceptible to developing this condition," Dr. Shah responded, "I believe that's true." Dr. Shah further testified that "but for that Guillain-Barre it was more likely than not that Mr. Terry would not have developed

this condition" and that if he did not have Guillain-Barre syndrome "he's less likely to get this . . . [t]han members of the general public."

A deputy commissioner denied Terry's workers' compensation claims and he appealed to the Full Commission. The Full Commission filed an opinion and award affirming the deputy commissioner's decision and denying Terry's workers' compensation claims. The Commission concluded that Terry "did not develop an occupational disease" because his "exposure to cold, in and of itself, would not have caused his finger problems; rather, [Terry's] peculiar susceptibility occasioned by his pre-existing [Guillain-Barre syndrome] was a requisite and overwhelming factor in his development of those problems, rendering these claims not compensable." Terry timely appealed the Commission's opinion and award to this Court.

Analysis

Terry argues that the Industrial Commission erred in finding and concluding that the injuries to his fingers were not a compensable occupational disease. Our review of this issue is heavily constrained by the narrow standard of review applicable to findings by the Industrial Commission.

Our review of the Commission's opinion and award "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. 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). "The findings of fact by the Industrial Commission are conclusive on appeal if supported by *any* competent evidence." *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977) (emphasis added).

Under N.C. Gen. Stat. § 97-53(13), an "occupational disease" must be "proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment." Thus, for a disease to be a compensable occupational disease under the Workers' Compensation Act, it must be "(1) characteristic of persons engaged in the particular trade or occupation in which the claimant is engaged; (2) not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and (3) there must be a causal connection between the disease and the [claimant's] employment." *Rutledge v. Tultex Corp./Kings Yarn*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983).

Here, the Commission found that Terry developed Guillain-Barre syndrome before his employment with Harris Teeter and that the syndrome left Terry with permanent numbness and inability to feel cold temperatures in his fingers. The Commission also found that Terry's injuries would not have resulted from his

handling of cold items on the job but for this specific, individualized medical condition that rendered Terry unable to sense cold in his extremities.

Those findings are supported by at least some competent evidence in the record. Terry testified that "with his [Guillain-Barre syndrome], he had been able to handle cold materials more frequently, and for longer periods of time, than someone without" his condition and that he "did not believe that he would have developed the finger problems that led to his filing of these workers' compensation claims but for his [Guillain-Barre syndrome]." Terry presented no evidence that any supermarket meat cutter developed similar injuries without suffering from Guillain-Barre syndrome.

In addition, Terry's treating physician, Dr. Shah, testified that he believed "a butcher at Harris Teeter who doesn't have Guillain-Barre wouldn't have this happen to him, that it was Mr. Terry's peculiar condition [that] made him much more susceptible to developing this condition," and that "but for that Guillain-Barre, it was more likely than not that Mr. Terry would not have developed this condition."

We recognize that Terry has pointed to some contradictory evidence in the record suggesting that meat cutters at a supermarket are more susceptible to these types of cold-related injuries and diseases than the public generally. But under the narrow standard of review applicable on appeal, we must accept the Commission's

findings because there is at least some competent evidence supporting them. *Gallimore*, 292 N.C. at 402, 233 S.E.2d at 531.

In light of those findings, the Commission properly concluded that Terry's injuries were not "due to causes and conditions which are characteristic of and peculiar to" his occupation and thus not an occupational disease as defined by the Workers' Compensation Act. N.C. Gen. Stat. § 97-53(13). The Commission relied on this Court's opinion in *Hayes v. Tractor Supply Co.* in concluding that Terry's condition was not an occupational disease. In *Hayes*, we explained that "an individual's personal sensitivity to chemicals does not result in an occupational disease compensable under our workers' compensation scheme." *Hayes v. Tractor Supply Co.*, 170 N.C. App. 405, 408, 612 S.E.2d 399, 402 (2005). This Court affirmed the denial of the plaintiff's occupational disease claim in *Hayes* because the "plaintiff had a heightened peculiar susceptibility" and "her personal sensitivity predated" her workers' compensation claim. *Id.* at 409, 612 S.E.2d at 402.

Here, as in *Hayes*, the record supports the Commission's finding that the employee had a particular, personal susceptibility to the disease or injury and that this personal susceptibility predated the start of employment. Accordingly, under *Hayes* and based on findings supported by competent evidence, the Commission properly concluded that Terry's injuries were not the result of an occupational disease. We therefore affirm the Commission's opinion and award.

Conclusion

We affirm the Full Commission's opinion and award.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).