An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-540

Filed: 6 February 2018

North Carolina Industrial Commission, I.C. No. 14-002099

OLIVIA JENKINS, Employee, Plaintiff

v.

EASTER SEALS UCP OF NORTH CAROLINA & VIRGINIA, INC., Employer, BRICKSTREET MUTUAL INSURANCE, Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 10 March 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 October 2017.

Olivia Jenkins, pro se plaintiff-appellant.

McAngus Goudelock & Courie, by Cassie M. Keen, for defendant-appellees.

BRYANT, Judge.

Where the record provides competent evidence to support the Commission's findings of fact that plaintiff's left knee soreness was due to degenerative arthritis and the findings support the conclusion that plaintiff failed to meet her burden of proof to establish the causation of her injury was work related, we affirm the opinion and award of the Commission denying plaintiff's workers' compensation claim.

On 27 November 2013, defendants Easter Seals UCP of North Carolina and Virginia, Inc., and insurance carrier, Brickstreet Mutual Insurance, filed a Form 19 with the North Carolina Industrial Commission reporting that plaintiff Olivia Jenkins sustained an injury to her right knee when she fell over a pallet at work. In her notice of accident to defendant employer, plaintiff indicated that she injured her right shoulder, both knees, her head, and abdomen. Defendants denied her claims other than as to her right knee. Plaintiff requested that her claim as to her left knee injury be assigned for hearing.

The matter was heard before Deputy Commissioner Philip Baddour, who entered a 30 June 2016 opinion and award denying plaintiff's claim. Plaintiff appealed the matter to the Full Commission (hereinafter "the Commission").

The Commission's findings indicate that plaintiff worked for defendant Easter Seals UCP of North Carolina & Virginia, Inc., as a production supervisor. On 27 November 2013, plaintiff's left foot got caught behind a pallet causing her to fall to the floor. Plaintiff landed on her knees, with her right knee hitting the ground the hardest. On 29 November, plaintiff sought treatment at the Halifax Regional Medical Center. She informed medical care providers that she had fallen forward and hurt her right shoulder, lower back, and both of her knees. After an X-ray was reviewed, plaintiff was diagnosed with a contusion to her right knee. Plaintiff reported the incident to defendant the following week.

Plaintiff later testified that her right knee symptoms resolved by January 2014 and that all injuries listed on her Form 18 (right shoulder, head, abdomen, and back) had gone away. In May 2014, plaintiff contacted defendant's workers' compensation adjuster and requested medical treatment for her left knee. Plaintiff testified that she did not seek medical treatment for her left knee between November 2013 and May 2014, because the pain did not "show up" until May 2014.

On 12 June 2014, plaintiff sought medical treatment at Halifax Regional Medical Center for pain in her left knee. Plaintiff told medical staff that the pain started six months earlier after she experienced a fall at work but worsened over the recent few days. She was prescribed medication and instructed to follow up with an orthopedist if the pain did not improve. On 18 June 2014, plaintiff presented to North Carolina Orthopedics with complaints of pain in her left knee. Plaintiff underwent an MRI, "which showed evidence of degeneration without a defined clinical tear, with normal cruciate and collateral ligaments. Patellofemoral and suprapatellar bursa fluid development was normal, but the ACL was intact. A dominant popliteal cyst was also noted." On 30 June, plaintiff returned to North Carolina Orthopedics. Dr. John Moss reviewed plaintiff's MRI and recommended arthroscopic surgery on the left knee. Plaintiff underwent surgery on 27 August 2014. Dr. Moss's post-operative diagnosis was "grade III arthrosis of the medial femoral condyle." On 8 September, 7 October, and 10 November, plaintiff returned to Dr. Moss for follow-up treatment.

Plaintiff was out of work from 13 August until 7 October 2014. Following her 10 November visit, Dr. Moss released plaintiff to resume all work-related activities, as they could be tolerated. On 5 January 2015, Dr. Moss filed with the Industrial Commission a Form 25R, Evaluation for Permanent Impairment, in which he stated that plaintiff was at maximum medical improvement and had no work restrictions; however, plaintiff had a five percent impairment rating to her left leg. In response to written questions submitted by plaintiff and defendants following the hearing before Deputy Commissioner Baddour, Dr. Moss replied that "[he] [did] not feel the fall caused the problem in [plaintiff's] left knee for which [Dr. Moss] treated her. The findings at [the] time of [the] arthroscopy are secondary to a degenerative process." The Commission noted that Dr. Moss cited plaintiff's history and timeline as not consistent with an acute injury. The Commission found that

> [Dr. Moss] attributed the cause of Plaintiff's left knee condition to degenerative arthritis. He confirmed that Plaintiff's arthritis is not the result of the November 2013 fall, and that if Plaintiff's left knee arthritis had been aggravated by the fall in November 2013, he would have expected her to have had symptoms earlier than she did.

Furthermore, plaintiff admitted that the opinions Dr. Moss expressed were consistent with his statements to her when she asked him if her left knee problem was caused by the 27 November 2013 fall.

The Commission found that "Plaintiff's left knee soreness resolved shortly after the November 27, 2013 work accident and that the left knee pain she experienced for

the first time in [May] 2014 was due to a degenerative condition unrelated to the November 27, 2014 fall." Thus, the Commission concluded that "Plaintiff failed to meet her burden of proving a causal relationship between her accident at work on November 27, 2013 and her left knee condition for which she later treated with Dr. Moss in June 2014." In its opinion and award entered 10 March 2017, the Commission denied plaintiff's claim for workers' compensation benefits for her left knee. Plaintiff appeals.

On appeal, plaintiff argues that the Commission erred by (I) concluding that the causation of plaintiff's left knee condition was a degenerative condition not related to plaintiff's 27 November 2013 fall; (II) failing to note that Dr. Moss's opinion was given as speculation without medical certainty; and (III) failing to find that plaintiff's left knee condition was a result of her 27 November 2013 fall.

Standard of Review

"Appellate review of an opinion and award from the Industrial Commission is generally limited to determining: (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008) (citation omitted). "Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal. However, when we

review the challenged findings of fact, we do not reweigh the evidence because the Commission is the fact finder." *Bishop v. Ingles Mkts., Inc.*, 233 N.C. App. 431, 434, 756 S.E.2d 115, 118–19 (2014) (citation omitted). "If there is any competent evidence supporting the Commission's findings of fact, those findings will not be disturbed on appeal despite evidence to the contrary." *File v. Norandal USA, Inc.*, 232 N.C. App. 397, 401, 754 S.E.2d 202, 206 (2014) (citation omitted). "The Commission's conclusions of law are reviewed *de novo*." *Burley v. U.S. Foods, Inc.*, 368 N.C. 315, 317, 776 S.E.2d 832, 834, *reh'g denied*, 368 N.C. 598, 778 S.E.2d 435 (2015).

I

Plaintiff argues that the Commission erred by finding that the causation of plaintiff's left knee condition was a degenerative condition. Plaintiff contends that "the greater evidence to Plaintiff['s] left knee condition is link[ed] to her fall at work on November 27, 2013, when her left foot got caught behind a pallet and threw her outward onto a cement floor."

Because our standard of review directs that this Court review the record on appeal for competent evidence in support of the Commission's findings of fact, and because the record provides competent evidence in support of the Commission's finding that plaintiff's left knee condition was a degenerative condition, we affirm the Commission. *See Bishop*, 233 N.C. App. at 434, 756 S.E.2d at 118 ("[W]hen we review the challenged findings of fact, we do not reweigh the evidence because the

Commission is the fact finder." (citation omitted)); *File*, 232 N.C. App. at 401, 754 S.E.2d at 206 ("If there is any competent evidence supporting the Commission's findings of fact, those findings will not be disturbed on appeal despite evidence to the contrary." (citation omitted)).

"In cases involving complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Holley v. ACTS, Inc.*, 357 N.C. 228, 232, 581 S.E.2d 750, 753 (2003) (citation omitted).

Plaintiff challenges the Commission's findings of fact which indicate that her left knee condition was a degenerative condition not related to her 27 November 2013 fall.

In considering plaintiff's claim that injury to her left knee was due to a fall she experienced at work, the Commission considered Dr. Moss's responses to interrogatories submitted by defendants and plaintiff regarding his observations during his treatment of plaintiff as well as his conclusions about her condition. Following are the questions to which Dr. Moss responded.

> [Q.] Following your review of the hearing transcript and Plaintiff's enclosed medical records, are you able to form an opinion of whether the fall of November 27, 2013 caused the left knee condition for which you treated Plaintiff?
>
> [A.] I do not feel the fall caused the problem in her left knee for which I treated her. The findings at time of

arthroscopy are secondary to a degenerative process.

[Q.] If you are not able to render an opinion, why is that?

[No response.]

[Q.] If you are able to render an opinion, what do you believe to be the cause of Plaintiff's left knee condition?

[A.] Degenerative arthritis

[Q.] If you do not believe that the fall caused the left knee condition, why is that?

[A.] As stated in #1 – also the history and time line are not consistent with an acute injury.

. . . .

[Q.] Couldn't the soreness that Plaintiff reported initially be caused by the cyst that was identified on the MRI report?

[A.] Popliteal cysts usually give posterior [indecipherable] symptoms—her symptoms were compatible with a contusion.

. . . .

[Q.] Isn't it true that Plaintiff was diagnosed with arthritis after your knee scope of August 2014?

[A.] Yes.

[Q.] Plaintiff's arthritis is not the result of the November 2013 fall, correct?

[A.] Correct

> [Q.] If you do believe that the fall caused the left knee condition, if Plaintiff's left knee arthritis had been aggravated by the fall in November 2013, wouldn't you expect her to have had symptoms prior to April 2014?
>
> [A.] Yes

The record provides competent evidence to support the Commission's finding of fact such as "the left knee pain [plaintiff] experienced for the first time in April 2014 was due to a degenerative condition unrelated to the November 27, 2013 fall." *See File*, 232 N.C. App. at 401, 754 S.E.2d at 206. Accordingly, plaintiff's argument is overruled.

II

Plaintiff next argues that Dr. Moss's medical opinion was merely speculation. Plaintiff argues that on two office visits, Dr. Moss documented on office forms under social history that plaintiff's injury was work related, thus, contradicting his opinion that the pain in plaintiff's left knee was the result of degenerative arthritis. However, plaintiff does not further support her contention and does not indicate how the statement under the social history section of a physician's office form amounted to a medical diagnosis and not simply information the patient provided during intake. Accordingly, we overrule plaintiff's argument.

III

Lastly, plaintiff argues that the Commission erred by failing to include in their findings that on 19 January 2015, while plaintiff was receiving treatment at North Carolina Orthopedics, for left hip pain, Dr. Moss stated that plaintiff's left hip pain was associated with limping plaintiff developed due to pain in her left knee after surgery.

However, even if the Commission had made this finding of fact, it would not have affected the Commission's conclusion that "[p]laintiff failed to meet her burden of proving a causal relationship between her accident at work on November 27, 2013 and her left knee condition for which she later treated with Dr. Moss in June 2014." Accordingly, we overrule plaintiff's argument.

For the aforementioned reasons, the Commission's 10 March 2017 opinion and award denying plaintiff's claim for workers' compensation benefits for her left knee is

AFFIRMED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).