An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-634

Filed: 15 January 2019

North Carolina Industrial Commission, Nos. 15-036998; 15-055793

DIANNA DINGEMAN, Employee, Plaintiff,

v.

MISSION HEALTH SYSTEM, INC., Employer, SELF-INSURED, SELF-ADMINISTERED, Defendant.

Appeal by Plaintiff from opinion and award entered 7 February 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 November 2018.

Thomas F. Ramer for Employee-Plaintiff.

Brewer Defense Group, by Joy H. Brewer, for Employer-Defendant.

DILLON, Judge.

Dianna Dingeman appeals from an opinion and award of the North Carolina Industrial Commission denying her workers' compensation claim. After careful review, we affirm.

I. Background

On 20 April 2015, Ms. Dingeman was injured while working at Mission Hospital in Asheville, NC. Approximately a month later, on 26 May 2015, Ms. Dingeman stood up after sitting to eat lunch, heard a loud pop in her knee, and immediately experienced unbearable pain. Prior to the incidents, Ms. Dingeman had a history of bilateral knee conditions dating back forty (40) years.

Ms. Dingeman filed a claim with the Industrial Commission regarding the 20 April 2015 incident. Employer Mission Health System, Inc., ("Mission Health") filed a Form 63, accepting Ms. Dingeman's 20 April 2015 incident on a medical-only basis and denying further treatment based on the allegation that Ms. Dingeman's current condition is *not* causally related to the incident. Mission Health also filed a Form 61 denying the 26 May 2015 incident.

In February 2017, after a hearing on the matter, the Deputy Commissioner denied Ms. Dingeman's claim against Mission Health. This decision was subsequently affirmed by the Full Commission. Ms. Dingeman timely appealed to our Court.

II. Standard of Review

We review an opinion and award of the Industrial Commission for "whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). If *any* evidence supports

the findings of the Commission, the opinion and award will be upheld. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998).

III. Analysis

Ms. Dingeman argues that the Industrial Commission erred in three ways: (1) by imposing the burden of proof on Ms. Dingeman, (2) by determining that the aggravation of Ms. Dingeman's pre-existing condition had ceased and that she had returned to her pre-injury baseline, and (3) by determining that the 26 May 2015 incident was an intervening incident. We address each argument in turn.

Ms. Dingeman first argues that the Industrial Commission erred by imposing the burden of proof on her, citing Finding of Fact No. 32 and Conclusion of Law No. 3. Specifically, she argues that she was entitled to the *Parsons* presumption shifting the burden of proof concerning causation of her current condition to Mission Health. We disagree.

It is well settled that it is "[t]he claimant [who] has the burden of proving that his claim is compensable under the [North Carolina Workmen's Compensation] Act." *Henry v. A.C. Lawrence Leather Co.*, 231 N.C. 477, 479, 57 S.E.2d 760, 761 (1950). However, the *Parsons* presumption operates where a claimant's injury has been proven to be compensable. *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 540-43, 485 S.E.2d 867, 868-69 (1997) (holding that where an injury has been proven to be compensable, the burden of proof shifts to the defendant to prove that the

compensable injury is *not* directly related to the claimant's present discomfort and medical treatment).

Whether an injury is compensable is generally determined by the Commission, admitted by the employer, or agreed upon by the parties. *Gross v. Gene Bennett Co.*, 209 N.C. App. 349, 351, 703 S.E.2d 915, 917 (2011). Our Supreme Court has held that an employer's acceptance of a claim on a medical-only basis "cannot in any sense be deemed an admission of liability." *Biddix v. Rex Mills, Inc.*, 237 N.C. 660, 664, 75 S.E.2d 777, 781 (1953).

Here, as stated in Finding of Fact No. 32, the Commission did not make a determination regarding the compensability of the incident; no Form 60 admission was filed by Mission Health, nor did the parties stipulate or agree to compensability. Rather, Mission Health filed a Form 63, authorizing Ms. Dingeman's claim for medical benefits only, and the parties stipulated to same. Mission Health has continuously denied that Ms. Dingeman's current condition is related to the 20 April 2015 incident. This evidence supports the Commission's conclusion that the *Parsons* presumption does not apply in this case to shift the burden of proof to Mission Health; the burden of proof remains with Ms. Dingeman to prove that her present need for medical treatment was caused by the 20 April 2015 incident.

Second, Ms. Dingeman challenges several additional findings of fact and conclusions of law, arguing that the Commission erred in finding and concluding that

the aggravation of her pre-existing condition had ceased and that she had returned to her pre-injury baseline condition. Ms. Dingeman also argues that the Commission erred in finding and concluding that the 26 May 2015 incident was intervening and therefore solely necessitated the need for a total knee replacement.

In her challenges to these findings and conclusions, Ms. Dingeman asks this court to re-weigh the evidence and testimony provided by several doctors. However, our Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965).

A review of the Commission's findings and the evidence introduced at the hearing reveals that three doctors testified and offered expert medical testimony. All three doctors testified and opined that Ms. Dingeman had returned, or "was progressing towards returning" to her pre-injury state, or baseline, after the incident. All three doctors also testified and opined about the differences between the 20 April 2015 and the 26 May 2015 incidents, the severity of and resulting injuries of the incidents, and Ms. Dingeman's need for treatment after the 26 May 2015 injury.

These testimonies are sufficient to support the Commission's determinations that total right knee replacement was inevitable, that the 20 April 2015 incident did not "significantly contribute to [Ms. Dingeman's] need for the total right knee

replacement," and that the 26 May 2015 incident accelerated Ms. Dingeman's need for surgery. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414.

IV. Conclusion

We hold that the Industrial Commission's conclusions of law are supported by the Commission's findings, which, in turn, are supported by competent evidence, as evinced in the hearing transcript and the record. As such, the Industrial Commission's opinion and award is affirmed.

AFFIRMED.

Judges Bryant and Zachary concur.

Report per Rule 30(e).