IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-865

Filed: 16 April 2019

North Carolina Industrial Commission, Nos. 15-036839 & 16-012878

PEGGY D. WOODARD, Employee, Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER COMPANY, Employer, LIBERTY MUTUAL INSURANCE COMPANY, Carrier, Defendants

Appeal by plaintiff from opinion and award entered 20 June 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 March 2019.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner and The Law Office of David P. Stewart by David P. Stewart, for plaintiff-appellant.

Young Moore and Henderson, P.A., by Lori M. Allen & Angela Farag Craddock, for defendant-appellees.

BRYANT, Judge.

Where the Industrial Commission ("the Commission") issued findings of fact that plaintiff Peggy D. Woodard's injury did not occur "by accident," and those findings of fact are supported by evidence in the record, we are compelled to affirm the opinion and award of the Commission.

Plaintiff had been employed by defendant-employer The Goodyear Tire & Rubber Company (hereinafter "Goodyear") as a curing trucker since 16 September

2013. Plaintiff's work duties include moving loaded flatbeds and regularly making turns in her fork truck.

On 3 August 2015, plaintiff felt pain in her shoulder as she was turning the steering wheel of the truck. Plaintiff filed a Form 18 where she indicated that she "injured her right side, right trapezius muscle." Plaintiff stated that she "was rushing and in a hurry because 3 people were on the paint machine and she had fallen behind; [she] hooked her truck up to a flatbed, went to turn right and felt [a] pop in [the] right side; [that she was] working while favoring [her] injured left arm, overusing the right." Liberty Mutual Insurance Company (hereinafter "Liberty Mutual") was identified as the carrier for plaintiff's injury. On 13 August 2015, Goodyear and Liberty Mutual filed a form 61 denying plaintiff's claim, alleging that plaintiff did not sustain an injury by accident "arising out of and in the course" of her employment. Plaintiff amended her Form 18 five days later and included her "right shoulder" as one of the parts of her body that was injured on the right side. On 21 February 2016, she requested a hearing before the Commission.

On 12 March 2016, plaintiff sustained another injury to her right shoulder and, four days later, filed a Form 18 alleging "[a] full flat[-]bed broke lose [sic] and hit the truck she was on and she was thrown forward and injured her right shoulder." Plaintiff also amended her initial Form 18 filed in 2015 to include "repetitive motion

from the trucker job" in the injury description and requested a hearing for the 2016 injury on 27 June 2016.

On 7 September 2016, a consolidated hearing took place before a deputy commissioner. The parties entered a stipulation before the deputy commissioner agreeing to waive the issue with prejudice as to whether plaintiff sustained a compensable injury to her right shoulder on 12 March 2016. The deputy commissioner concluded that plaintiff failed to establish she sustained a compensable injury by accident to her right shoulder on 3 August 2015 and dismissed her claim. Plaintiff appealed to the Full Commission.

On 13 December 2017, the Full Commission filed an opinion and award that affirmed the order of the deputy commissioner dismissing plaintiff's claim. Plaintiff appeals.

On appeal, plaintiff argues the Commission erred by finding that she did not sustain a compensable injury by accident arising out the course of her employment.

This Court's review of decisions by the Commission is "limited to reviewing 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). All findings of fact shall be conclusive and binding upon review of the Commission if there is any

evidence to support the finding. *Hawley v. Wayne Dale Const.*, 146 N.C. App. 423, 427, 552 S.E.2d 269, 272 (2001).

In the instant case, plaintiff disputes the Commission's reliance on medical testimony, which led to the Commission's conclusion that plaintiff's right shoulder injury was not the result of an accident. The Commission made the following findings of fact, in relevant part, based on the depositions of Dr. Perez and Dr. Barnes, as to plaintiff's injury:

> 12. Due to the numerous inconsistences between Plaintiff's initial and subsequent descriptions of the mechanism of the alleged injury, Plaintiff's claims regarding the "abruptness" of the turn are not credible. The Full Commission finds that Plaintiff was performing her usual and customary duties in the usual way at the time of the alleged injury.
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> 20. Dr. Perez contracts with Premise Health, the onsite medical dispensary. He is an expert in general and occupational medicine. Dr. Perez testified that Plaintiff provided a history to him at her first visit on August 7, 2015 of turning her steering wheel when she felt a sharp pain. He noted she did not say that anything unusual happened when she was turning a steering wheel. Dr. Perez opined, based on his knowledge of Plaintiff's job, that Plaintiff must turn a steering wheel as a part of her normal job.
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> 21. Dr. Perez opined that with respect to the description of incident as originally described by Plaintiff, hurrying would not have had any impact on the motion of turning a steering wheel. Dr. Perez also testified that hurrying to hitch a load would have no impact on an employee.

22. In relation to whether the alleged mechanism of injury caused Plaintiff's rotator cuff tear, Dr. Perez opined that he felt the initial history of turning of a steering wheel would be inconsistent with Plaintiff's shoulder injury. While Dr. Perez opined that it was more likely than not that someone would develop a shoulder injury as a result of turning a steering wheel "abruptly," a description not in the initial reports of injury or medical reports and which has been found to be not credible, Dr. Perez opined that the findings on Plaintiff's MRI were unlikely to have been caused by turning a steering wheel. He also opined that this type of injury normally does not just involve one particular function or movement since the tear involved three of the four rotator cuff muscles.

23. Dr. Perez opined to a degree of reasonable medical certainty that if Plaintiff were to only have to lift up to seventy pounds occasionally or sporadically, then he would say that Plaintiff's job did not place her at an increased risk of contracting a right shoulder condition as compared to a member of the general public.

24. Dr. Perez also opined to a reasonable degree of medical certainty that pulling fourteen pounds of force required by hitching would also not place Plaintiff at an increased risk of sustaining a shoulder injury as compared to members of the general public not so employed. Dr. Perez testified that shoulder injuries were not common for truckers in positions like Plaintiff's. Dr. Perez opined to a reasonable degree of medical certainty that he did not believe that Plaintiff's condition was caused by her regular job duties.

25. Plaintiff did not complain of any right shoulder pain at her August 5, 2015 appointment with Dr. Barnes. Dr. Barnes next saw Plaintiff on August 19, 2015. Dr. Barnes noted Plaintiff had a rotator cuff tear with significant retraction, but he did not feel she had significant muscle atrophy. Dr. Barnes believed the tear had likely been

present less than three months. Plaintiff underwent surgery on September 15, 2015 and Dr. Barnes opined that the purpose of the surgery was to address Plaintiff's symptomatic rotator cuff tear. After his release of Plaintiff on February 15, 2016, Dr. Barnes did not see Plaintiff again in relation to this incident.

26. Dr. Barnes opined that the August 3, 2015 alleged injury caused her right shoulder tear. However, Dr. Barnes' opinion on this issue was based upon Plaintiff's later description to him that she had turned the steering wheel "abruptly" and felt a pop in her shoulder. Also, when asked if "jerking the steering wheel suddenly" could have caused Plaintiff's rotator cuff tear, Dr. Barnes testified that it would be unusual for that to cause that big of a tear, but not unheard of. He went on to state, "I do not believe it's likely that just turning a steering wheel would do that, but if something, you know, jerked, pulled, overloaded, caught her off guard – so it would have to be something unusual in my opinion, not just turning, not just doing this hitch thing but something big-time as our president would say." Because the Full Commission finds that Plaintiff was just steering her truck in her usual and customary fashion and does not find Plaintiff's later description of the turn as "abrupt" to be credible, *the Commission gives no weight to Dr. Barnes' opinion as to cause of the right shoulder tear*.

27. With regard to Plaintiff's claim of an occupational disease of the shoulder, Dr. Barnes opined that Plaintiff was not at an increased risk of sustaining a traumatic rotator cuff tear due to her job duties. He also opined he did not think Plaintiff would have been at a greater risk of developing her [right] shoulder injury based on overuse of that arm after the left arm surgery.

28. With regard to whether Plaintiff's job was a significant contributing factor to the development of her shoulder condition, Dr. Barnes opined that her shoulder condition was not the result of repetitive use. Again, Dr. Barnes opined that a tear like the one sustained by

> Plaintiff would have required something violent or more substantial than merely turning a steering wheel. When specifically asked whether "jerking" a steering wheel "suddenly" would fit as the mechanism of injury in this case, which were descriptors never used by Plaintiff in her reports of injury or medical records, Dr. Barnes opined that it would be unlikely but not wholly impossible for that kind of event to cause Plaintiff's shoulder condition. Dr. Barnes also opined that hurrying would have no impact on the motion of Plaintiff's normal job duties.
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> 29. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff failed to prove that her right shoulder injury was caused by an interruption of her regular work routine and the introduction thereby of unusual conditions likely to result in unexpected consequences.

(emphasis added). The Commission then concluded based on these findings, *inter alia*, that "[b]ecause Plaintiff's right shoulder injury was not the result of an 'accident' within the meaning of the Act, her claim must be denied." After careful consideration, we agree.

"The Workers' Compensation Act extends coverage only to injury by accident arising out of and in the course of employment." *Gunter v. Dayco Corp.*, 317 N.C. 670, 673, 346 S.E.2d 395, 397 (1986) (citation and quotation marks omitted). An "[a]ccident involves the interruption of the work routine and the introduction thereby of unusual conditions likely to result in unexpected consequences." *Harding v. Thomas & Howard Co.*, 256 N.C. 427, 429, 124 S.E.2d 109, 111 (1962).

"To establish a compensable claim, the burden [i]s on plaintiff to prove [s]he sustained an injury by accident arising out of and in the course of h[er] employment." *O'Mary v. Land Clearing Corp.*, 261 N.C. 508, 509, 135 S.E.2d 193, 194 (1964). "[T]here must be some unforeseen or unusual event other than the bodily injury itself" to establish an injury by accident. *Rhinehart v. Roberts Super Mkt., Inc.*, 271 N.C. 586, 587, 157 S.E.2d 1, 3 (1967). "If an employee is injured while carrying on his usual tasks in the usual way[,] the injury does not arise by accident." *Gunter*, 317 N.C. at 673, 346 S.E.2d at 397.

The Commission, in its "ultimate fact-finding function[,] . . . determines [the] credibility [of witnesses], whether from a cold record or from live testimony." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998). "[T]he Commission[, a]s the sole judge of the credibility of the witnesses and the weight of the evidence[,]" is not "required to offer reasons for its credibility determinations." *Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 305–07, 661 S.E.2d 709, 714–15 (2008).

Plaintiff contends that "[t]he Commission's findings of fact are unclear, however, because they are little more than a mere recitation of the sworn testimony of Drs. Perez and Barnes[,]" and the Commission improperly analyzed their testimony. However, a review of Dr. Perez's deposition reveals that Dr. Perez stated that a patient's initial description of injury "generally is more reliable" to medical providers when determining the probability of an accident because "it's fresh in their

mind and it's generally the one that's taken as fact." Plaintiff's initial report of the accident was that she sustained injury to her right side, not her right shoulder. Later amendments were made to the initial report—one of which occurred after plaintiff was injured again almost a year later—to include language of "the right shoulder" as the injury and the "repetitive motion from the trucker job" as the cause. The record supports the Commission's findings of fact that there were multiple inconsistences in plaintiff's descriptions of her injury.

Plaintiff argues that the Commission inadequately analyzed the inconsistent testimony regarding the causation of her injury and failed to consider Dr. Barnes's testimony that "something big-time happened" to plaintiff. However, the Commission determined that plaintiff was not credible in describing the causation of her injuries and gave no weight to Dr. Barnes' opinion regarding causation. This Court has stated that the Commission's findings will not disturbed "if they are supported by competent evidence even if there is contrary evidence in the record." *Hawley,* 146 N.C. App. at 427, 552 S.E.2d at 272.

Accordingly, where the Commission's findings of fact are supported by competent evidence in the record, and, in turn, support the Commission's conclusion that plaintiff did not sustain a compensable injury by accident within the meaning of the Workers' Compensation Act, we are compelled to affirm the Commission's ruling.

For the reasons stated herein, the Commission's opinion and award is

AFFIRMED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).