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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-221

No. COA20-634

Filed 18 May 2021

North Carolina Industrial Commission, I.C. No. 19-727832

RODERICK MILES, Employee, Plaintiff,

v.

NANO-TEX, INC., Employer, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Carrier, Defendants.

Appeal by defendants from order entered 18 March 2020 by the North Carolina Industrial Commission. Heard in the Court of Appeals 27 April 2021.

Roderick Miles pro se.

Orbock Ruark & Dillard, PC, by Mark A. Leach and Megan Youngblood, for defendant-appellees.

TYSON, Judge.

¶ 1 Nano-Tex, Inc. and Travelers Property Casualty Company of America (collectively “Defendants”) appeal from an order filed 18 March 2020 by the North Carolina Industrial Commission (“Commission”). We reverse and remand.

I. Background

¶ 2 Roderick Miles (“Plaintiff”) was employed as a lab technician by Nano-Tex from January 2005 until 30 September 2005. On 27 September 2005, Plaintiff filed a Form

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18 Notice of Accident in which he alleged he had inhaled chemicals during a chemical bath where a puff of “blue smoke from a curing oven” escaped. Plaintiff alleged he experienced a “variety of symptoms while performing his work, including difficulty swallowing, feeling as though his chest had expanded, chest pain, palpitations, tiredness, and a headache.” Plaintiff’s claims were denied by order of the Full Commission dated 8 June 2009.

¶ 3 Plaintiff filed a Form 18 Notice of Accident on 13 May 2019 alleging on 7 September 2005 he had “Inhaled Toxic Fumes and gases . . . suffered multi bodily (sic) injuries manifested cardiac sarcoidosis.” Plaintiff filed an IC Form 33 Request for Hearing on 25 June 2019. Defendants filed a motion to dismiss Plaintiff’s claim on 5 August 2019 alleging it was barred by *res judicata*.

¶ 4 By order entered 12 August 2019, the deputy commissioner dismissed the claim with prejudice for *res judicata*, the ground to dismiss as alleged by Defendants. Plaintiff appealed to the Full Commission, which heard the matter on 8 January 2020. The Full Commission vacated the deputy commissioner’s 12 August 2019 order and remanded the case for a “full evidentiary hearing” on 11 February 2020. Defendants filed a motion for reconsideration on 26 February 2020 and by order dated 18 March 2020, the Full Commission denied Defendants’ motion for reconsideration. Defendants appealed.

II. Jurisdiction

¶ 5 An appeal lies with this Court from the Industrial Commission pursuant to

N.C. Gen. Stat. §§ 7A-29(a) and 97-86 (2019).

III. Issues

¶ 6 Defendants argue the Full Commission erred by overturning the deputy commissioner's order dismissing Plaintiff's claim for *res judicata* and collateral estoppel.

IV. *Res Judicata*

A. Standard of Review

¶ 7 “Our review is to determine whether the Commission's findings of fact are supported by competent evidence and whether those findings support the Commission's conclusions of law.” *McAllister v. Wellman, Inc.*, 162 N.C. App. 146, 148, 590 S.E.2d 311, 312 (2004) (citations omitted). The Commission's conclusions of law are reviewed *de novo*. *Id.* (citations omitted).

B. Analysis

¶ 8 Our Court has held:

The doctrine of *res judicata* precludes relitigation of final orders of the Full Commission and orders of a deputy commissioner which have not been appealed to the Full Commission. The essential elements of *res judicata* are: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in the prior suit and the present suit; and (3) an identity of parties or their privies in both suits.

Bryant v. Weyerhaeuser Co., 130 N.C. App. 135, 138, 502 S.E.2d 58, 61 (1998) (internal citation omitted). The Full Commission's 8 June 2009 order is a final judgment

between identical parties. The identity of the parties remains the same. We must determine whether the cause of action litigated and resolved in the 8 June 2009 order involved the same cause of action asserted before the Commission in Plaintiff's 2019 claim.

¶ 9 In the prior action Plaintiff alleged injuries to his “lungs, heart, chest, and throat.” The Full Commission found Plaintiff suffered from no injury by accident or occupational disease. In his Form 18 Notice of Accident filed 13 May 2019, Plaintiff alleged he “manifested cardiac sarcoidosis.” Plaintiff's prior action contains extensive allegations and details of cardiovascular tests and findings presented to the Commission. Plaintiff made general cardiac assertions concerning his 2005 proceeding and a specific cardiac allegation in the 2019 proceeding. Plaintiff cannot assert a new cause of action by naming a new specific ailment arising from the same non-compensable incident, wherein the same ailments were asserted and denied. The Full Commission erred by reversing the deputy commissioner's order dismissing for *res judicata*. In light of our decision, we need not reach Defendant's argument regarding collateral estoppel.

V. Conclusion

¶ 10 Plaintiff asserted the same cause of action in both his 2005 and 2019 claims. The Full Commission erred by reversing the deputy commissioner's order based upon *res judicata*. The Full Commission's order is reversed and remanded with instructions to enter an order dismissing Plaintiff's claim. *It is so ordered.*

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REVERSED AND REMANDED.

Chief Judge STROUD and Judge ZACHARY concur.

Report per Rule 30(e).