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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-332

No. COA21-424

Filed 3 May 2022

Industrial Commission, No. 18-715547

TRACY WILLIAMS, Employee, Plaintiff,

v.

HELPING HANDS MISSION, Employer, LIBERTY MUTUAL INS. CO., Carrier,  
Defendants.

Appeal by Plaintiff from opinion and award entered 13 April 2021 by the North  
Carolina Industrial Commission. Heard in the Court of Appeals 25 January 2022.

*Hardison & Cochran, PLLC, by J. Jack Hardison, for Plaintiff-Appellant.*

*Cranfill Sumner LLP, by Steven A. Bader, for Defendants-Appellees.*

COLLINS, Judge.

¶ 1

Plaintiff Tracy Williams appeals from an opinion and award denying his claim for workers' compensation. Plaintiff argues that the Commission erred by determining that Plaintiff was not a credible witness, concluding that Plaintiff's claim was barred by his failure to give timely written notice under N.C. Gen. Stat. § 97-22, and failing to address whether Plaintiff's injury fell within the premises exception to the coming and going rule. We affirm because the Commission, as the sole judge of



witness credibility, determined that Plaintiff's testimony was not credible and no other testimony supported Plaintiff's account of the alleged injury.

## **I. Background**

¶ 2 Defendant-Employer Helping Hands Mission "is an organization that provides relief and assistance to persons in need," operating in Raleigh, North Carolina. Plaintiff began working for Employer as an appliance technician in 2005 or 2006. On the morning of 28 August 2017, Plaintiff suffered a nasal laceration and fractured nasal bone. Plaintiff filed a Form 18, Notice of Accident to Employer and Claim of Employee ("Initial Form 18") alleging that this injury occurred while he was "riding [a] bike to work[,] came around [a] corner to [a] wooden fence[, and] he hit a pipe that was sticking out." In an Amended Form 18, Notice of Accident to Employer and Claim of Employee ("Amended Form 18"), Plaintiff alleged that he "was riding his bike to work when he came around a corner in the parking lot that is owned and controlled by [ ] Employer when he hit a pipe that was sticking out."

¶ 3 Employer and Employer's insurance carrier, Liberty Mutual Insurance Company (together "Defendants"), denied Plaintiff's claim and Plaintiff requested a hearing. The Deputy Commissioner heard evidence and entered an opinion and award directing Defendants to pay Plaintiff temporary total disability compensation, a lump sum for serious facial disfigurement, and the costs of medical treatment. Defendants appealed to the Full Commission.



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¶ 4

The Commission reviewed the record of the proceedings before the deputy commissioner, the briefs, and the arguments of the parties and entered an opinion and award denying Plaintiff's claim for workers' compensation. The Commission made the following pertinent findings of fact:<sup>1</sup>

3. On August 28, 2017, at 9:17 a.m., Plaintiff was admitted to WakeMed Raleigh Campus Hospital Emergency Department and treated . . . for a fractured nasal bone. According to the provider notes for this visit, Plaintiff "wasn't paying attention" and was not wearing a helmet when he "struck a 'pipe' while riding his bike." The notes later state that Plaintiff "was riding a bicycle and ran into a pipe on a truck." Plaintiff was treated for a three-centimeter nasal laceration and an "open fracture of [the] nasal bone." Plaintiff received twelve sutures to his nose and was released the same day. Plaintiff was medically cleared to return to work on September 1, 2017.

. . . .

7. On March 26, 2018, Plaintiff filed [the Initial Form 18] alleging that he sustained a nose fracture and neck injury on August 28, 2017 while "riding his bike to work [and] came around [the] corner *to wooden fence* [and] he hit a pipe that was sticking out." (Emphasis in italics added).

8. On May 10, 2018, Plaintiff filed [the Amended Form 18] amending his prior description of the accident to indicate that he was "riding his bike to work when he came around a *corner in the parking lot that is owned and controlled by Defendant-Employer* [and] . . . hit a pipe that was sticking out." (Emphasis in italics added).

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<sup>1</sup> Brackets, emphasis, and added parentheticals are original to the Commission's opinion and award.



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9. On April 4, 2018, Defendants filed a Form 61: *Denial of Worker's Compensation Claim* alleging that the “alleged injury did not occur at work,” the “employee was not injured as a result of his employment,” and “the alleged injury was not related to a risk of the employment.”

. . . .

11. This matter was heard before Deputy Commissioner Harris on January 25, 2019. At the hearing, Plaintiff testified that he was riding his bike to work at approximately 9:00 a.m. As he was “riding down the sidewalk . . . [he came] around the curve, [and] hit a pipe [that was] sticking out on the sidewalk.” According to Plaintiff, the pipe “was hanging off the top of the fence” on Bart Street. Plaintiff testified that he was injured approximately 40 to 45 feet from the Rock Quarry Road entrance to Defendant-Employer’s premises. Plaintiff acknowledged there was a gate in the fence near the area where he was injured, but that the gate was no longer in use.

. . . .

13. Plaintiff testified that the alleged accident was witnessed by “Lawrence” and possibly “Tom.” However, neither “Lawrence” or “Tom” were called to testify or provide supporting account[s] of the alleged accident.

14. Sylvia Wiggins is Defendant-Employer’s Executive Director, a position she has held for “about 42 years.” At the hearing, Ms. Wiggins testified that, although none of her employees were required to clock in or out, Plaintiff came to the Helping Hands Mission “pretty much every day” and normally “came in every morning.” Ms. Wiggins testified that Plaintiff worked mostly repairing washers and dryers. Ms. Wiggins testified that, although Plaintiff repaired some appliances at customers’ homes, his base of employment was Defendant-Employer’s office on Rock Quarry Road in Raleigh. Ms. Wiggins



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testified that on the day of Plaintiff's injury, she arrived shortly before 9:00 a.m. and was there for 30 or 45 minutes before she heard that Plaintiff had been injured.

15. There is no evidence of record that Plaintiff ever provided Defendant-Employer with written notice of his accident on August 28, 2017, or his intent to pursue a claim under the Workers' Compensation Act. Ms. Wiggins testified that the first time she learned that Plaintiff was bringing a claim for benefits under the Workers' Compensation Act for his injury on August 28, 2017, was when she received a letter from Liberty Mutual in March of 2018. Ms. Wiggins testified that between the date of his injury and the filing of his Form 18 in March 2018, she had no conversations with Plaintiff to the effect that he was filing a workers' compensation claim.

16. Ms. Wiggins testified that Defendant-Employer owns and maintains the fence that Plaintiff allegedly ran into on August 28, 2017. . . .

17. Ms. Wiggins testified that she did not believe a piece of the fence was sticking out or that Plaintiff was injured when he ran into it. Ms. Wiggins testified that she never observed a pole projecting over the sidewalk from the area where Plaintiff was injured. There are no photographs of the area in the immediate aftermath of the incident which show the condition of the fence at the time of the incident. There is also a dispute over whether there was such a pole. Ms. Wiggins testified that immediately after Plaintiff's accident, she saw his bike lying on the sidewalk, but that she did not see a pole sticking out from the fence in that area. Ms. Wiggins also testified that she did not see a pole sticking out from the fence when she returned after taking Plaintiff to the hospital.

. . . .

20. With respect to the mechanism of Plaintiff's injury, the Full Commission does not find Plaintiff's



testimony regarding the events of August 28, 2017 credible and gives it little weight. While Plaintiff testified he was injured when he struck a pole sticking out from Defendant-Employer's property while riding his bike, Plaintiff provided varying descriptions of injury in his Industrial Commission filings as well as to his treating physicians. Further, Plaintiff did not provide corroborating testimony from his coworkers who he alleged were present at the time of the injury, and Plaintiff never informed Ms. Wiggins of a potential workers' compensation claim. While Plaintiff testified that he was injured at around 9:00 a.m., Ms. Wiggins testified that she did not learn of his injury until 9:45 or 10:00 a.m. Furthermore, Ms. Wiggins testified that she examined the area where Plaintiff claimed he was injured and saw his bike on the ground, but did not see a protruding pole. Accordingly, the preponderance of the evidence in view of the entire record fails to establish that Plaintiff sustained a compensable injury by accident on August 28, 2017.

. . . .

22. The preponderance of the competent evidence in view of the entire record shows . . . that Plaintiff never provided written notice of his August 28, 2017 accident to Defendant-Employer.

¶ 5

The Commission determined that, “[g]iven the conflicting and inconsistent factual evidence in this case, lack of corroborating witnesses and written notice to the employer,” Plaintiff was “not a credible witness, and his testimony and statements regarding the alleged incident on or about August 28, 2017 cannot be relied upon to support the occurrence of an injury by accident.” The Commission therefore concluded that Plaintiff “failed to meet his burden of proving, by a preponderance of the evidence in view of the entire record, that he sustained a compensable injury by



accident on or about August 28, 2017.” The Commission also concluded in the alternative that Plaintiff’s claim was barred by N.C. Gen. Stat. § 97-22 because Plaintiff failed to provide Employer with timely written notice and had not shown a reasonable excuse for the lack of notice.

¶ 6 Plaintiff appealed to this Court.

## II. Discussion

¶ 7 Plaintiff challenges the Commission’s determination that he was “not a credible witness, and his testimony and statements regarding the alleged incident on or about August 28, 2017 cannot be relied upon to support the occurrence of an injury by accident.”

¶ 8 Under the Workers’ Compensation Act, “the Commission is the sole judge of the credibility of the witnesses and the weight of the evidence.” *Hassell v. Onslow Cnty. Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008) (citing N.C. Gen. Stat. §§ 97-84 to -86 (2007); *Adams v. AVX Corp.*, 349 N.C. 676, 680-81, 509 S.E.2d 411, 413 (1998)).

The Commission may not wholly disregard competent evidence; however, as the sole judge of witness credibility and the weight to be given to witness testimony, the Commission may believe all or a part or none of any witness’s testimony. The Commission is not required to accept the testimony of a witness, even if the testimony is uncontradicted. Nor is the Commission required to offer reasons for its credibility determinations.



*Id.* at 306-07, 661 S.E.2d at 715 (quotation marks and citations omitted). Our Supreme Court has stated that

[r]equiring the Commission to explain its credibility determinations and allowing the Court of Appeals to review the Commission’s explanation of those credibility determinations would be inconsistent with our legal system’s tradition of not requiring the fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.

*Deese v. Champion Int’l Corp.*, 352 N.C. 109, 116-17, 530 S.E.2d 549, 553 (2000).

¶ 9

Plaintiff’s challenge to the Commission’s credibility determination is analogous to the argument rejected by the Supreme Court in *Hassell*. There, the Commission stated several reasons why it gave “little weight to the opinions” of the plaintiff’s expert witness who testified “concerning causation and increased risk of [the] plaintiff’s mental condition.” *Hassell*, 362 N.C. at 303, 661 S.E.2d at 712. The Commission therefore concluded that the plaintiff had failed to prove her generalized anxiety disorder was “due to causes and conditions which are characteristic of and peculiar to her employment” and denied her occupational disease claim. *Id.* at 301, 661 S.E.2d at 711. The plaintiff argued that the Commission’s articulated reasons for its credibility determination did “not indicate that it seriously considered or weighed [the expert’s] testimony before rejecting it.” *Id.* at 304-05, 661 S.E.2d at 713. The Supreme Court held that “while the Commission did include reasons for its credibility determinations . . . , it was not required to do so[.]” and that the record



sufficiently demonstrated the “Commission considered the expert’s testimony, but decided to afford it little weight, as it may do.” *Id.* at 307, 661 S.E.2d at 715.

¶ 10 Here, as in *Hassell*, the Commission gave reasons for its credibility determination, though it was not required to do so. The Commission found Plaintiff was not credible based on: (1) “conflicting and inconsistent factual evidence in this case,” (2) a lack of testimony from potential corroborating witnesses identified by Plaintiff, and (3) a lack of written notice to Employer. The record reflects that the Commission considered Plaintiff’s testimony and decided to afford it no weight. “[A]s the sole judge of witness credibility and the weight to be given to witness testimony,” the Commission was entitled to “believe all or a part or none of” Plaintiff’s testimony. *See id.* at 306, 661 S.E.2d at 715 (quotation marks and citations omitted). Plaintiff’s challenge to the sufficiency of the Commission’s reasons for its credibility determination is without merit.

¶ 11 “In a worker’s compensation claim, the employee has the burden of proving that his claim is compensable.” *Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003) (quotation marks and citation omitted). Under the Workers’ Compensation Act, “an ‘injury’ is compensable when it is: (1) by accident; (2) arising out of employment; and (3) in the course of employment.” *Wilkes v. City of Greenville*, 369 N.C. 730, 737, 799 S.E.2d 838, 844 (2017) (citing N.C. Gen. Stat. § 97-2(6) (2015); *Gallimore v. Marilyn’s Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977)).



Plaintiff's testimony was the only testimony providing an account of how Plaintiff's injury occurred. In light of the Commission's determination that this testimony was not credible, the Commission did not err by concluding that Plaintiff "failed to meet his burden of proving, by a preponderance of the evidence in view of the entire record, that he sustained a compensable injury by accident on or about August 28, 2017."<sup>2</sup> *See Sheehan v. Perry M. Alexander Constr. Co.*, 150 N.C. App. 506, 514, 563 S.E.2d 300, 305 (2002) (holding that the Commission did not err in concluding that an employee failed to meet his burden of proving a compensable injury where the Commission determined the employee's account was not credible and no other "evidence remained indicating that plaintiff sustained his injury in a work-related accident").

### III. Conclusion

¶ 12 Because Plaintiff's testimony provided the sole account of his allegedly compensable injury and the Commission determined that Plaintiff's testimony was not credible, the Commission did not err by concluding that Plaintiff failed to meet his burden of proving a compensable injury.

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<sup>2</sup> Because we conclude that the Commission did not err by denying Plaintiff's claim on this ground, we do not address Plaintiff's arguments that the Commission erred by concluding that Plaintiff's claim was barred by N.C. Gen. Stat. § 97-22 and by failing to address whether Plaintiff's injury fell within the premises exception to the coming and going rule.



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AFFIRMED.

Judges GORE and JACKSON concur.

Report per Rule 30(e).