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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1069

Filed 19 September 2023

N.C. Industrial Commission, I.C. Nos. X45404, X82412

STEPHANIE MESSICK, Employee, Plaintiff,

v.

WALMART STORES, INC., Employer, NEW HAMPSHIRE INSURANCE COMPANY, Carrier (CLAIMS MANAGEMENT, INCORPORATED, Third-Party Administrator), Defendants.

Appeal by Defendants from Opinion and Award entered 26 July 2022 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 June 2023.

Wallace and Graham, P.A., by Whitney Wallace Williams, for Plaintiff-Appellee.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones, Paul C. Lawrence, and Olivia L. Perry, for Defendants-Appellants.

HAMPSON, Judge.

Factual and Procedural Background

Walmart Stores, Inc. and New Hampshire Insurance Company (Defendants) appeal from an Opinion and Award entered by the Full Commission of the North Carolina Industrial Commission (Commission). Relevant to this appeal, the Record

before us tends to reflect the following:

On 9 January 2012, Plaintiff filed a Form 18, Notice of Accident to Employer and Claim of Employee, alleging that she injured her back while working as a deli associate for Walmart on 29 May 2011 (May Injury). On 9 January 2012, Plaintiff filed a second Form 18, alleging injury to the right knee after falling on 8 July 2011 while sweeping the Walmart dressing rooms (July Injury). On 10 June 2020, Plaintiff amended the Form 18 for the July Injury to also claim injury to the left knee. On 20 February 2012, Defendants filed a Form 60, Employer's Admission of Employee's Right to Compensation, accepting the compensability of Plaintiff's July Injury to the right knee. Defendants commenced temporary partial disability compensation on 20 February 2012, for disability beginning on 4 January 2012. Defendants formally denied Plaintiff's claims to the left knee.

On 1 November 2012, Defendants also submitted a Form 60 accepting the compensability of Plaintiff's May Injury. For the May Injury, as stated on the Form 60, Plaintiff's first date of disability was 23 October 2012, and temporary total disability compensation commenced on 1 November 2012. Plaintiff filed two Form 33 Requests for Hearing on 1 March 2021.

This matter was heard before a Deputy Commissioner on 2 June 2021. On 12 October 2021, the Deputy Commissioner entered an Opinion and Award concluding, in relevant part: (1) Plaintiff's right to disability compensation for her May Injury is governed by N.C. Gen. Stat. § 97-29 as it existed at the time of her 29 May 2011

injury; (2) Plaintiff's right to disability compensation for her July Injury is governed by N.C. Gen. Stat. § 97-29 as it was amended, effective 24 June 2011. Defendants appealed the Deputy Commissioner's Opinion and Award, contending the June 2011 amendment to N.C. Gen. Stat. § 97-29 should govern, resulting in Plaintiff not being entitled to lifetime compensation for her May Injury. On 26 July 2022, the Commission filed an Opinion and Award affirming the Deputy Commissioner's conclusion that N.C. Gen. Stat. § 97-29 governed the May Injury as it existed prior to the June 2011 amendment. Defendant filed written Notice of Appeal on 24 August 2022.

Issue

Whether the Commission erred in concluding Plaintiff's 29 May 2011 back injury is governed by the law in effect at the date of injury.

Analysis

"Our standard of review for a Commission's opinion and award is limited to whether the Commission's findings of fact support its conclusions of law. Where the competent evidence supports the Commission's findings, those findings are binding on appeal." *Aldridge v. Novant Health, Inc.*, 280 N.C. App. 372, 378-79, 867 S.E.2d 721, 725 (2021) (citation omitted). "Thus, on appeal, this Court does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414

(1998) (citation and quotation marks omitted). We review the Commission's conclusions of law de novo. *McRae v. Toastmaster Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004).

Defendants contend Plaintiff did not qualify for disability benefits for her May Injury until 1 November 2012, the date Defendants submitted a Form 60 pursuant to N.C. Gen. Stat. § 97-18(b), indicating disability began on 23 October 2012. We disagree.

It is well-established by our Supreme Court: "The long-standing rule in both this and other jurisdictions is that the right to compensation in cases of *accidental* injury is governed by the law in effect at the time of injury." *Wood v. J. P. Stevens & Co.*, 297 N.C. 636, 644, 256 S.E.2d 692, 698 (1979) (citations omitted). Here, it is undisputed Plaintiff's back injury occurred on 29 May 2011. Thus, Plaintiff's right to compensation for her May Injury is governed by the law in effect at the time of the injury—prior to the June 2011 amendment. Therefore, the Commission did not err in concluding Plaintiff's right to compensation for the May Injury is governed by N.C. Gen. Stat. § 97-29 as it existed on 29 May 2011. Consequently, the Commission did not err in its award of benefits to Plaintiff.

Conclusion

Accordingly, for the foregoing reasons, we affirm the Commission's Opinion and Award entered 26 July 2022.

AFFIRMED.

MESSICK V. WALMART STORES, INC.
Opinion of the Court

Judges DILLON and COLLINS concur.

Report per Rule 30(e).