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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-84

Filed 17 December 2024

N.C. Industrial Commission, No. 18-054517

PATRICIA VALDOVINOS, Employee, Plaintiff,

v.

DUKE UNIVERSITY, Employer, SELF-INSURED, Defendant.

Appeal by Plaintiff from opinion and award entered 16 November 2023 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 27 August 2024.

*Perry, Perry & Perry, P.A., by Chelsi C. Edwards and Robert T. Perry, for Plaintiff-Appellant.*

*Cranfill Sumner LLP, by Steven A. Bader and Jennifer Morris Jones, for Defendant-Appellee.*

GRIFFIN, Judge.

Plaintiff Patricia Valdovinos appeals from an opinion and award entered by the Full Commission of the North Carolina Industrial Commission in which the Commission found (1) Plaintiff had reached maximum medical improvement (“MMI”); (2) Plaintiff failed to show changing her physician was reasonably

necessary; and (3) Plaintiff retains a five percent partial impairment to her hand. Plaintiff contends the Full Commission erred in its findings and improperly denied her continued compensation. We affirm the Commission's findings.

### **I. Factual and Procedural Background**

Plaintiff, a housekeeper employed by Defendant Duke University, slipped on a patch of ice during work and injured her left wrist. She was taken by ambulance to the emergency room, where she was diagnosed with a “minimally displaced distal radius fracture in her left wrist.” The emergency room physicians splinted her wrist, prescribed Plaintiff medication to manage her pain, and referred her to Dr. Mithani for orthopedic treatment.

Plaintiff visited Dr. Mithani several days later with “ongoing discomfort . . . as well as swelling in her hands and fingers.” Dr. Mithani diagnosed her with “closed intra-articular fracture of distal end of left radius[.]” Plaintiff's wrist was splinted again, and she was instructed to return to work with restrictions the following month.

Plaintiff returned to work with ongoing pain that made performing her duties more difficult. She followed up with Dr. Mithani, who described her healing as routine. Dr. Mithani provided Plaintiff with a removable brace, referred her for occupational therapy, and adjusted her work limitations. Whereas before she was restricted to no lifting, pulling, pushing or grasping with her left arm, now Dr. Mithani deemed those activities appropriate if limited to five pounds or less.

The following spring, Plaintiff visited Dr. Mithani again with complaints of

continued pain in her wrist and thumb. Dr. Mithani attributed the pain to De Quervain's disease, provided Plaintiff with another brace, and administered a corticosteroid injection to reduce Plaintiff's pain. Plaintiff received another corticosteroid injection at a follow-up appointment the next month. Three months later, Plaintiff returned to Dr. Mithani. The report from her visit recorded that she complained of "ongoing diffuse wrist pain with numbness and tingling extending into her first two digits," signs Dr. Mithani attributed to carpal tunnel syndrome. At that appointment, Dr. Mithani adjusted Plaintiff's work restrictions and limited her to lifting only up to twenty-five pounds. Plaintiff received treatment several days later from Duke University's Employee Occupational Health and Wellness Clinic ("EOHW") for "ongoing pain and decreased range of motion" in her fingers. The treating nurse practitioner diagnosed Plaintiff with carpal tunnel in the left wrist. Plaintiff's carpal tunnel diagnosis was confirmed by EMG and nerve conduction testing.

Plaintiff received corticosteroid injections at two follow-up appointments with Dr. Mithani's physician's assistant ("PA"), one for carpal tunnel pain and the other for pain related to her De Quervain's disease. When those shots and occupational therapy failed to solve Plaintiff's pain, Dr. Mithani recommended and subsequently performed a surgical "release of the first dorsal extensor compartment [in] Plaintiff's left wrist" on 14 February 2020. By April 2020, Plaintiff was instructed to decrease use of her splint, return to work with no restrictions, and "return if her carpal tunnel

symptoms did not resolve.”

In June and July 2020, Plaintiff sought further treatment at EOHW for swelling and pain in her hand and wrist that was significantly improved with occupational treatment but exacerbated by physical strain. Dr. Mithani attributed the pain to De Quervain’s disease and osteoarthritis and treated with a corticosteroid injection. At a follow-up appointment the next month, a PA documented that Plaintiff’s work-related injury had reached MMI with no continuing disability.

In January, Plaintiff requested, and Duke authorized, a visit to Dr. Tuttle for a second opinion regarding Plaintiff’s permanent partial impairment rating. Dr. Tuttle assessed a ten percent impairment rating and discussed further options for treatment with Plaintiff.

Four months later, Plaintiff filed a Form 33 and alleged Defendant had improperly denied her compensation for unpaid bills, a change of physician, additional medical treatment, an appropriate impairment rating, and acknowledgement of her disability. Defendant requested a hearing before the Industrial Commission. At a hearing before a Senior Deputy Commissioner, both parties stipulated that Plaintiff’s fractured wrist and De Quervain’s disease were compensable, but Defendant challenged whether they were responsible for compensating Plaintiff for her carpal tunnel syndrome, tenosynovitis, and osteoarthritis. The Deputy Commissioner rejected Plaintiff’s argument that her carpal tunnel, tenosynovitis, and osteoarthritis were compensable claims and found

that she failed to show a total or partial disability, thus disqualifying her from further disability compensation. Plaintiff appealed the results of that hearing, and the matter was heard before the Full Commission the following month.

The Full Commission considered the parties' pre-trial agreement, Industrial Commission forms, Plaintiff's medical records, job description, and employment file, as well as the parties' discovery responses and emails. Also considered was testimony from Plaintiff, Dr. Tuttle, and other employees of Defendant. The Commission entered an opinion and award affirming and modifying the Deputy Commissioner's determinations, ordering Defendant to pay for all reasonably necessary treatment "incurred or to be incurred for Plaintiff's left wrist injury" and compensating Plaintiff for her permanent partial impairment.

Plaintiff timely appeals.

## **II. Analysis**

Plaintiff challenges three factual findings made by the Commission, contending that each is unsupported by the evidence before the Commission. We address each argument below.

### **A. Standard of Review**

Worker's compensation claims are governed by section 97-1 through -200 of the North Carolina General Statutes. When disputes arise between employers and their employees related to compensation for injuries defined under section 97-2(6), those disputes are heard by the Industrial Commission. N.C. Gen. Stat. § 97-84 (2023).

The Commission utilizes the entire record to make factual findings “based upon the preponderance of the evidence[.]” and, from those findings, conclusions of law. *Id.*

This Court performs a limited review of Commission decisions, restricting our review to two questions: (1) were the findings of fact supported by competent evidence; and (2) were the conclusions of law justified by the findings of fact? *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492 (2005). Awards granted by the Commission “shall be conclusive and binding as to all questions of fact[.]” N.C. Gen. Stat. § 97-86 (2023). Such findings survive challenges on appeal if “there is any competent evidence to support them[.]” *Weaver v. Am. Nat’l Can Corp.*, 123 N.C. App. 507, 509–10, 473 S.E.2d 10, 12 (1996). It is improper for this Court to reweigh the evidence presented to the Commission; we only determine whether there was any evidence contained within the record which supports the Commission’s findings. *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). The Commission is the sole determiner of both the credibility and weight of the evidence presented, including witness testimony. *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683–84 (1982).

Findings may be set aside “only ‘when there is a complete lack of competent evidence to support them[.]’” *Pitillo v. N.C. Dep’t of Env’t. Health & Nat. Res.*, 151 N.C. App. 641, 644, 566 S.E.2d 807, 810 (2002) (quoting *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 914 (2000)). This is the case even when there is

evidence presented that could support an alternative finding. *Weaver*, 123 N.C. App. at 510, 473 S.E.2d at 12.

## **B. Competent Evidence**

Plaintiff challenges three findings of fact: (1) she reached MMI in August 2020; (2) she was not entitled to a change of physician; and (3) she maintains a five percent permanent partial impairment rating. Plaintiff contends the findings are material to the conclusions of law and are unsupported by competent evidence. We address each finding.

### ***1. Maximum Medical Improvement***

Plaintiff first challenges Finding of Fact 37, which states Plaintiff's fracture and De Quervain's disease reached MMI on 11 August 2020:

37. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff reached maximum medical improvement for her compensable left distal radius fracture and her De Quervain's tenosynovitis as of August 11, 2020. In reaching this finding, the Commission considers the medical records from Plaintiff's authorized treating physician documenting that Plaintiff had reached maximum medical improvement for these conditions, including her reports of the cessation of symptoms from these conditions as of August 2020 and the opinions of her treating providers that she had reached maximum medical improvement as of that time, as well as the fact that Plaintiff did not attempt to return to those providers for further treatment of those conditions. Further, in reaching this finding, the Commission gives less weight to Dr. Tuttle's opinions, as his examination of Plaintiff was conducted pursuant to N.C. Gen. Stat. § 97-27(b).

Plaintiff argues the evidence presented to the Commission did not “reasonably support” Finding 37 because, although the parties stipulated to the authenticity of Plaintiff’s medical records, she did not stipulate to the accuracy of the diagnosis and prognosis contained therein. Furthermore, Plaintiff contends the Commission had insufficient information to determine whether Defendant’s witnesses—Dr. Mithani, PA List, and PA Paarz-Largay—were qualified as experts, thus making their testimony “unqualified opinions.” Considering only Dr. Tuttle’s expert opinion, Plaintiff argues, the record contains “not a scintilla of evidence” to support the Commission’s finding.

Relying on *Click v. Pilot Freight Carriers*, Plaintiff contends the Commission could not have decided on MMI without expert medical testimony. However, this Court’s analysis of expert testimony in *Click* was limited to questions involving causation. In *Click*, our Supreme Court held “[m]edical testimony [is] needed to provide a proper foundation for the Commission’s finding on the question of [an] injury’s origin” when “[i]n the absence of guidance by expert opinion as to *whether the accident could or might have resulted in [an] injury*, the Commission could only speculate on the probable cause of [the] condition.” *Click v. Pilot Freight Carriers*, 300 N.C. 164, 169, 265 S.E.2d 389, 392 (2014) (emphasis added).

At the heart of Plaintiff’s argument in this case is disagreement with the Industrial Commission’s decision to weigh the evidence contained in Plaintiff’s medical records more heavily than Dr. Tuttle’s testimony. But the Industrial



Commission, not this Court, must weigh the evidence in each case. *See Anderson*, 265 N.C. at 434, 144 S.E.2d at 274. This Court has never held that a party is required to present expert testimony to demonstrate when the plaintiff reached MMI, and we decline to do so in this matter. *See Wilkes v. City of Greenville*, 369 N.C. 730, 746, 799 S.E.2d 838, 849 (2017) (“[W]e have never held, and decline to do so now, that an employee is required to produce expert testimony in order to demonstrate his inability to earn wages. A plaintiff’s own testimony, as well as that of his lay witnesses, can be quite competent to explain how a plaintiff’s injury and any related symptoms have affected his activities.”). Thus, that Defendant did not produce expert testimony at the Commission hearing is not dispositive in this matter.

The Commission based Finding 37 on Plaintiff’s treating provider and PAs’ opinions, the fact she did not seek further treatment for the fracture or her De Quervain’s disease after 11 August 2020, and her medical records. The Commission considered but gave less weight to Dr. Tuttle’s opinion of this matter because his opinion arose from his examination of Plaintiff performed under section 97-27(b), which entitles employees to a second opinion “solely on the percentage of permanent disability provided by a duly qualified physician of the employee’s choosing[.]” N.C. Gen. Stat. §97-27(b) (2023). The Commission must “either disregard or give less weight to the opinions of [those physicians] on issues outside the scope of [percentage of permanent disability].” *Id.* *See Hilliard*, 305 N.C. at 595, 290 S.E.2d at 683–84 (“[T]he Industrial Commission is the sole judge of the credibility of the witnesses and

the weight to be given to their testimony.”).

Among the records considered by the Commission was documentation from an 11 August 2020 visit where a PA assessed Plaintiff’s “[r]esolved post operative compensatory pain of the [left] thumb . . . with resolved tenderness over [first] dorsal compartment [following a surgical] release.” The PA advised Plaintiff “to resume all activities as tolerated without restrictions” and informed her that “any further [left] thumb [carpometacarpal] based pain . . . would likely not be related to compensatory function of her left hand/wrist[.]” Plaintiff “indicate[d] understanding of . . . and agree[d] with the plan.” The PA concluded her notes with: “The patient has reached maximal medical improvement with no residual disability.”

We hold the medical records, the opinions of both PAs and Dr. Mithani, and the fact that Plaintiff did not seek further treatment for the fracture or De Quervain’s disease constitute competent evidence which supports Finding 37.

## ***2. Change of Physician***

Plaintiff next challenges Finding of Fact 38, which states Plaintiff failed to show she was entitled to a change of physician:

38. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff has failed to show that a change in her treating physician to Dr. Tuttle is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. In reaching this finding, the Commission gives less weight to Dr. Tuttle’s opinions, as his examination of Plaintiff was conducted pursuant to N.C. Gen. Stat. § 97-27(b).

Plaintiff argues that the evidence presented to the Commission did not “reasonably support” Finding 38 because Plaintiff’s original physicians released her from their care while she was still experiencing symptoms, and they ordered her to return using her personal insurance if she experienced carpal tunnel symptoms. Plaintiff also argues that a change in physician was necessary because Dr. Tuttle seemed more willing to consider her complaints of pain and swelling, and he “did not assume [] any future pain she may experience . . . was unrelated” to her fracture and De Quervain’s disease. Plaintiff contends that her original treating physicians’ “unwillingness to see her for her compensable injuries,” demonstrates a need for a change of physician.

Under North Carolina’s Workers’ Compensation Act, employers must provide medical compensation, as well as “medical, surgical, hospital, nursing, and rehabilitative services . . . as may reasonably be required to effect a cure or give relief and for such additional time as . . . will tend to lessen the period of disability[,]” N.C. Gen. Stat. §97-2(19) (2023), to their injured employees. N.C. Gen. Stat. §97-25(a) (2023). Once the employer accepts a claim as compensable, it may direct the employee’s medical treatment, including choosing the treating physician. *Craven v. VF Corp.*, 167 N.C. App. 612, 616–17, 606 S.E.2d 160, 163 (2004).

A change in treating physicians is subject to the Commission’s approval, and the employee is required to show by a preponderance of the evidence “that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of

disability.” N.C. Gen. Stat. §97-25(c) (2023). In making its decision, the Commission may “disregard or give less weight to” the opinions of the employee’s preferred physician. *Id.* The decision to approve a change of physician is within the discretion of the Commission and may only be altered on appeal if the Commission committed a “manifest abuse of discretion.” *Franklin v. Broyhill Furniture Indus.*, 123 N.C. App. 200, 207, 472 S.E.2d 382, 387 (1996).

The Commission reviewed the entire record, including Plaintiff’s medical records and testimony from Dr. Tuttle, and weighed the evidence contained therein to make its determination. Again, the Commission appropriately gave less weight to Dr. Tuttle’s opinions in accordance with N.C. Gen. Stat. §97-27(b). Contained in the medical records is follow-up documentation from 12 August 2020 which stated Plaintiff had “no pain in her left hand or wrist whatsoever [and] has no difficulty with any of her job duties.” Accordingly, we hold there is competent evidence contained in the medical records to support Finding 38.

### ***3. Partial Impairment Rating***

Finally, Plaintiff challenges Finding of Fact 39, which states Plaintiff maintains a five percent permanent partial impairment rating:

39. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff retains a five percent (5%) permanent partial impairment to her left hand. In reaching this finding, the Full Commission assigns some weight to each of the physicians who provided an opinion regarding the extent of Plaintiff’s permanent impairment.

Plaintiff argues the Commission could not have made such a finding because her treating providers were not tendered as experts and thus could only provide unqualified opinions on Plaintiff's level of permanent impairment. She contends the only qualified opinion—the opinion of Dr. Tuttle—supports a finding of ten percent permanent partial impairment rating.

To reach the five percent rating, the Commission considered Plaintiff's medical records, including the opinions of each provider who evaluated her injuries. Two PAs documented zero percent permanent partial impairment rating, and Plaintiff's expert, Dr. Tuttle, assessed a ten percent permanent partial impairment rating. The Commission "assigns some weight to each of the physicians who provided an opinion regarding the extent of Plaintiff's permanent impairment." As stated above, the Commission is the sole determiner of both the credibility and weight of the evidence presented, including witness testimony. *Hilliard*, 305 N.C. at 595, 290 S.E.2d at 683–84. Thus, we hold the record contained competent evidence to support the Commission's finding that Plaintiff's impairment rating fell between zero and ten percent, and it was appropriate for the Commission to average those ratings and arrive at a final five percent permanent partial impairment rating. *See Hogan v. Terminal Trucking Co.*, 190 N.C. App. 758, 765, 660 S.E.2d 911, 915 (2008) (holding the Commission, in considering two conflicting medical opinions, had competent evidence to "support a finding that plaintiff's impairment rating fell between zero and six percent and averaged three percent").

### **C. Conclusions of Law**

Although Plaintiff only explicitly raises issues with the findings of fact, implied in her argument is a challenge of the conclusions of law derived from those findings. When assessing the Industrial Commission's conclusions of law on appeal, our only duty is to assess whether those conclusions are justified by the findings of fact. *Clark*, 360 N.C. at 43, 619 S.E.2d at 492. In the matter before us, the Commission made five conclusions of law, three of which were derived directly from the findings Plaintiff challenges on appeal. We see no error with the conclusions of law as they are justified by the findings of fact.

### **III. Conclusion**

For the foregoing reasons, we hold the Commission's findings of fact were supported by competent evidence contained in the record and, consequently, the Commission did not err in its determinations.

AFFIRMED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).