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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-1029-2

Filed 17 December 2024

North Carolina Industrial Commission, No. X59853

RITA KOTSIAS, Employee, Plaintiff,

v.

FLORIDA HEALTH CARE PROPERTIES, Employer, ESIS, Carrier, Defendants.

Appeal by Plaintiff from Opinion and Award entered 28 June 2023 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 12 June 2024.

*Rita Kotsias, pro se Plaintiff-Appellant.*

*Teague Campbell Dennis & Gorham LLP, by Jason Shoemaker, and Mullen Holland & Cooper, PA, by D. Andrew Turman, for Defendants-Appellees.*

HAMPSON, Judge.

**Factual and Procedural Background**

Rita Kotsias (Plaintiff) appeals from an Opinion and Award filed by the North Carolina Industrial Commission on 28 June 2023 ordering Defendants to pay partial disability for the period of 20 January 2014 through 28 March 2014 and denying Plaintiff's request for medical treatment, compensation for past treatment, change in

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treating physician, and future disability compensation, and sanctioning her in the amount of \$2,500.00 for “unreasonable conduct and stubborn, unfounded litigiousness.”

This case was originally heard in the Court of Appeals on 12 June 2024. This Court entered its Opinion on 17 September 2024, which was certified to the North Carolina Industrial Commission on 7 October.

A full recitation of the factual history and below proceedings is available in our previous Opinion. *Kotsias v. Florida Health Care Props.*, 905 S.E.2d 918 (No. COA23-1029, 2024 WL 4210428) (unpublished). Plaintiff argued on appeal that the Commission erred by: (1) impermissibly disregarding evidence before it; (2) failing to allow the joinder of additional parties; (3) failing to address late disability payments made by Defendants; and (4) making findings of fact and conclusions of law at odds with the preponderance of evidence. We declined to dismiss Plaintiff’s appeal as a sanction for substantial violations of our Rules of Appellate Procedure and addressed the merits of the appeal. We held that the Commission had not impermissibly disregarded evidence, had not erred in declining to join additional parties, and we declined to reweigh the evidence and upset the findings of the Commission. Because, however, the Commission did not address the issue of late disability payments, we held the case should be remanded to the Commission for consideration of that issue.

Of note, in our prior Opinion, we noted the transcripts were not filed with our Court by Plaintiff. On 13 October 2024, Plaintiff filed a Motion for En Banc Rehearing

asserting, among other things, that she had filed transcripts from the proceedings below with this Court as part of the record. Upon investigation, it was determined that Plaintiff had, in fact, electronically uploaded the transcripts to this Court but, because of a technical issue, the transcripts were not reflected as part of the Record on Appeal or available to us for consideration of the merits.

Accordingly, in our discretion under Rule 2 of the Rules of Appellate Procedure, we suspended operation of the Rules of Appellate Procedure, stayed enforcement of the opinion, and *sua sponte* ordered rehearing by the panel consistent with Rule 31. We review the appeal based on the existing briefs and Record, now including the transcripts uploaded by Plaintiff.

On rehearing, we conduct an additional examination of the issues raised by Plaintiff on appeal based on our review of the transcripts and attached exhibits.

### **Analysis**

Plaintiff argues that the Commission's listing of exhibits "accepted into evidence by the Deputy Commissioner" in its Opinion and Award is incomplete and indicates the Commission did not make its decision "based upon the preponderance of the evidence in view of the entire record," as required by statute. *See* N.C. Gen. Stat. § 97-84 (2023). In our previous Opinion, we concluded Plaintiff had not shown she was prejudiced by the exclusion of exhibits from the Commission's list, noting that our review was frustrated by the unavailability of the transcripts. Upon review of the transcripts, we now determine any errors in the Commission's listing of

exhibits are clerical in nature only and do not indicate that it failed to consider evidence.

Our review of the transcript and attached exhibits shows that Plaintiff introduced six documentary exhibits which were accepted into evidence: Plaintiff's Exhibits 1, 2, 4, 5, 6, and 7.<sup>1</sup> The Opinion and Award lists each of these exhibits, but describes them erroneously, instead substituting in some cases descriptions of the "sub-exhibits" of Plaintiff's Exhibit Number 1 with corresponding numbers. However, the Commission listed all of Plaintiff's numbered exhibits before it, which were each identified, admitted, and attached to the transcript. There is no indication from the Opinion and Award that the Commission failed to consider the exhibits Plaintiff argues are excluded from its summary, which compose a significant portion of the documentary evidence admitted: Plaintiff's Exhibits 4 through 7 and sub-exhibits 6 through 20 represent nearly 900 pages of documentary evidence, out of a total of 1,933 pages admitted. To the contrary, any error in the listing of the exhibits is purely clerical in nature and does not substantively impact the Commission's decision.

Stipulated Exhibit Number 4 does appear to be excluded from the Commission's recitation of evidence, though it was admitted in the verbatim transcript and attached to the transcript as an exhibit. This exhibit is Plaintiff's

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<sup>1</sup> Plaintiff's Exhibit 3 was not admitted into evidence. The identification and admission of Plaintiff's Exhibit 4 is not reflected in the verbatim transcript, but it is attached to the transcript and consists of replacements of illegible or missing documents already included in stipulated exhibits.

“First Supplemental Answers to Interrogatories and Request for Production of Documents,” and merely consists of a list of medical reports and records produced by Plaintiff in discovery. It is apparent, however, from the Record and the Opinion and Award, that the Commission extensively considered Plaintiff’s medical reports and records in reaching its decision. Moreover, Plaintiff does not indicate, and we cannot ascertain, how the Commission’s alleged failure to review these written supplemental discovery responses prejudiced her.

Plaintiff also takes issue with the Commission’s descriptions of Defendants’ Exhibits in its list of documents accepted into evidence. Plaintiff’s disagreements with the Commission’s summary characterization of these Exhibits do not indicate to us that the Commission “wholly disregard[ed] or ignore[d] competent evidence.” *Pittman v. International Paper Co.*, 132 N.C. App. 151, 156, 510 S.E.2d 705, 709 (1999) (quoting *Lineback v. Wake Cnty. Bd. of Comm’rs*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997)).

Moreover, the availability of the transcripts does not change our analysis of the other issues presented by Plaintiff. The Industrial Commission did not err in declining to order the joinder of additional parties alleged to be related to Employer-Defendant Florida Health Care Properties. We again decline to substitute our own findings of fact for those made by the Commission which Plaintiff argues are not supported by the preponderance of evidence. The Commission’s Findings of Fact “are conclusive on appeal when supported by competent evidence even if there is evidence

to support a contrary finding and may be set aside on appeal only when there is a complete lack of competent evidence to support them.” *Johnson v. Herbie’s Place*, 157 N.C. App. 168, 171, 579 S.E.2d 110, 113 (2003) (citations omitted). The availability of the transcripts confirms there is evidence in the Record to support the Commission’s Findings of Fact. Nevertheless, we also again conclude the Commission did err by failing to address the issue of late disability payments, as discussed in our previous Opinion.

Thus, upon our further review of the Record—including transcripts of the proceedings and attached exhibits—our decision remains unchanged. Therefore, we conclude the Commission: (1) properly considered all evidence before it; (2) did not err by denying joinder of additional parties; (3) did fail to address the issue of late payments; and (4) did not make Findings of Fact unsupported by evidence in the Record. Consequently, the Commission did not err in entering its Opinion and Award, but is required to undertake consideration of whether Plaintiff is entitled to further relief for alleged late payments.

### **Conclusion**

Accordingly, for the foregoing reasons, we remand this case to the Industrial Commission for consideration of the issue of late payments and affirm the Opinion and Award as to all other issues. As sanction for violation of Rule 28, all costs of this appeal are taxed to Plaintiff-Appellant.

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AFFIRMED IN PART AND REMANDED. ALL COSTS TAXED TO APPELLANT.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).