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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-512

Filed 7 October 2026

N.C. Industrial Commission, No. 20-006142

SERGEY GALICH, Employee, Plaintiff,

v.

SIPA NORTH AMERICA, INC., Employer, NEW HAMPSHIRE INSURANCE COMPANY, Carrier (AIG CLAIMS, INC., Third-Party Administrator), Defendants.

Appeal by plaintiff from opinion and award entered 18 February 2025 in the North Carolina Industrial Commission. Heard in the Court of Appeals 14 October 2025.

The Law Offices of Bradley H. Smith, by Bradley H. Smith, for plaintiff-appellant.

McAngus, Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal, for defendants-appellees.

STROUD, Judge.

Sergey Galich (“Plaintiff”) appeals from an opinion and award of the North Carolina Full Industrial Commission. Plaintiff argues that the Industrial Commission erred in its application of the reasonableness test when it ordered

Plaintiff to undergo surgery or lose his temporary total disability benefit payments. After careful review of the record, we affirm the opinion and award.

I. Factual and Procedural Background

In September of 2018, Plaintiff began working as a field service engineer for Defendant SIPA North America. On 7 February 2020, Plaintiff injured his right shoulder while tightening bolts on a machine at work. Plaintiff filed a workers' compensation claim, which was accepted without prejudice, and began receiving weekly payments of \$1,066.00 from SIPA's workers' compensation carrier, New Hampshire Insurance Company (collectively with SIPA, "Defendants").

Four days after his accident, Plaintiff sought medical treatment at Concentra Medical Center. Plaintiff was diagnosed with a right shoulder strain and prescribed cyclobenzaprine, ibuprofen, and physical therapy. On 3 March 2020, an MRI of Plaintiff's right upper extremity revealed a Type 2 superior labrum anterior to posterior tear. Plaintiff was referred to an orthopedic specialist for an evaluation.

On 26 May 2020, Plaintiff met with Dr. Bryan Loeffler, an orthopedic surgeon who predominately performs upper extremity work. Dr. Loeffler discussed operative and nonoperative treatments and recommended Plaintiff undergo biceps tenodesis surgery (the "Recommended Surgery") on his right shoulder. At an appointment on 18 August 2020, Dr. Loeffler noted that Plaintiff "ha[d] been working diligently with therapy, however, has not experienced gains that will allow him to return to work and the function he desires." Plaintiff declined the Recommended Surgery, as he

“wished to defer surgery if at all possible.” On 15 September 2020, Plaintiff returned to Dr. Loeffler complaining of his lack of progress; Dr. Loeffler told Plaintiff that his “options [were] living with the shoulder” or having the Recommended Surgery. Plaintiff declined the Recommended Surgery. Based on Plaintiff’s decision, Dr. Loeffler released Plaintiff from his care with a “5% permanent partial disability rating to his right arm and a permanent restriction of ‘no lifting, pushing, or pulling more than 10 lbs. with [his] right arm.’” Dr. Loeffler testified that the Recommended Surgery was a “pretty low risk operation” and, had Plaintiff undergone the surgery, he would have a “80 to 90% chance of significant improvement.” Without the Recommended Surgery, in Dr. Loeffler’s opinion, Plaintiff’s shoulder pain would continue.

On 23 September 2020, Plaintiff received a second opinion from Dr. Seth L. Jaffe at Carolina Bone & Joint. Dr. Jaffe disagreed with Dr. Loeffler’s recommendation regarding the Recommended Surgery; Dr. Jaffe recommended a right shoulder labral debridement and/or labral repair. Plaintiff agreed to proceed with this surgery and was referred to Dr. Chason Hayes.

On 6 October 2020, Dr. Hayes recommended, and Plaintiff agreed to undergo, right shoulder arthroscopy with subacromial decompression, distal clavicle resection, and possible superior labral repair. However, Plaintiff never returned to Dr. Hayes for a preoperative evaluation. Plaintiff testified that he changed his mind because he

researched Dr. Hayes and “the references stated that” Dr. Hayes was not a “specialist on surgeries on shoulders and the general references were not good.”

At Plaintiff’s request, Defendants scheduled an evaluation with Dr. Patrick Connor on 8 June 2021. Dr. Connor informed Plaintiff that the Recommended Surgery was more reliable and “had a lower reoperation rate” than a labral repair. Plaintiff refused to undergo the Recommended Surgery. Dr. Connor testified that had Plaintiff undergone the Recommended Surgery, there was an “85 to 90 percent chance” that his pain would be minimal or completely resolved. Since that date, Plaintiff has not sought any further medical treatment and has not returned to work; however, Plaintiff continued to receive temporary disability benefits.

On 29 September 2023, the matter was heard before a deputy commissioner at the North Carolina Industrial Commission; it was later transferred to a different deputy commissioner. The deputy commissioner’s opinion and award was entered on 11 March 2024. In it, the deputy commissioner concluded that the Recommended Surgery “ha[d] a high probability of significantly reducing Plaintiff’s period of disability and would be sought by a similarly situated person” so “Plaintiff’s refusal to accept medical compensation in the form of the [Recommended S]urgery entitle[s] Defendants to an [o]rder compelling Plaintiff to undergo surgical repair.” The deputy commissioner also concluded that Plaintiff’s refusal to undergo the Recommended Surgery was unreasonable because the Recommended Surgery was “not of serious magnitude and risk, d[id] not involve much pain and suffering[,] and [was] not of

uncertain benefit.” Plaintiff was ordered to undergo the Recommended Surgery; if he refused the Recommended Surgery, he would be “deemed to have reached maximum medical improvement.”

Plaintiff appealed to the North Carolina Full Industrial Commission (the “Commission”). After a hearing on 21 August 2024, the Commission entered an opinion and award on 18 February 2025. As to the Recommended Surgery, the Commission found:

18. Based upon a preponderance of the evidence in view of the entire record, the . . . Commission finds that the surgery recommended to Plaintiff by Drs. Loeffler and Connor is reasonably required to effect a cure or give relief and would tend to lessen Plaintiff’s period of disability. Furthermore, this procedure is not risky, is not of uncertain benefit, and would require a relatively short recovery period. In making this finding, the . . . Commission notes that the testimony of Drs. Loeffler and Connor establishes that the surgery in question is not risky, that Plaintiff is a prime candidate for the surgery, that the surgery would have a high likelihood of improving the mobility and function of Plaintiff’s right shoulder while reducing his pain, and that the surgery would require a recovery period of 4-6 months.

The Commission concluded that “Plaintiff shall undergo the [Recommended Surgery] with either Dr. Loeffler or Dr. Connor, as directed by Defendants.” Alternatively, “[s]hould Plaintiff refuse to undergo this surgery, [he] shall be deemed to have reached maximum medical improvement regarding his compensable right shoulder injury,” and “Defendants shall no longer be required to pay Plaintiff temporary total disability benefits.”

Plaintiff appeals.

II. Analysis

Plaintiff argues that the Commission “erred in its application of the reasonableness test when ordering Plaintiff to undergo surgery.”

Appellate review of the Commission’s opinion and award is “limited to consideration of whether competent evidence supports the Commission’s findings of fact and whether the findings support the Commission’s conclusions of law.” *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008). Conclusions of law are reviewed *de novo*. *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011). The Commission’s “findings of fact may be set aside on appeal only when there is a complete lack of competent evidence to support them.” *Mayo v. City of Washington*, 51 N.C. App. 402, 406, 276 S.E.2d 747, 750 (1981) (citation omitted). If the evidence, “tends directly or by reasonable inference to support the Commission’s findings, [those] findings are conclusive on appeal even though there may be plenary evidence to support findings to the contrary.” *Id.* at 406-07, 276 S.E.2d at 750 (citation and quotation marks omitted). Uncontested findings of fact are binding on appeal. *Hinson v. Cont’l Tire the Americas*, 267 N.C. App. 144, 198, 832 S.E.2d 519, 555 (2019).

Section 97-25 of the Workers’ Compensation Act, which deals with medical treatment and supplies for workers, states:

The refusal of the employee to accept any medical

compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal.

N.C. Gen. Stat. § 97-25(d) (2025). Under this section, “[i]f there is evidence in the record that supports a finding of [the] plaintiff’s refusal to accept medical treatment or rehabilitative services after being ordered by the Industrial Commission to do so, then the Industrial Commission is justified in suspending the benefits while [the] plaintiff remains in non-compliance.” *Sykes v. Moss Trucking Co.*, 199 N.C. App. 540, 545, 685 S.E.2d 1, 4 (2009) (citation omitted).

When a plaintiff refuses medical treatment, however, “the benefits may not be suspended if the circumstances justify the refusal.” *Id.* at 546, 685 S.E.2d at 5 (citation, quotation marks, and brackets omitted). Our courts have established “a ‘reasonableness’ test to the decision of whether to deny benefits to a claimant refusing treatment, *i.e.*, an analysis of whether a reasonable person who is motivated to improve his or her health would accept the proffered treatment.” *Johnson v. Jones Grp., Inc.*, 123 N.C. App. 219, 225, 472 S.E.2d 587, 590 (1996) (citation omitted). Under the reasonableness test, a claimant’s refusal to undergo surgery is generally reasonable “where the surgery is [(1)] of serious magnitude and risk, [(2)] involves much pain and suffering[,] and [(3)] is of uncertain benefit.” *Crawley v. Southern Devices, Inc.*, 31 N.C. App. 284, 290, 229 S.E.2d 325, 329 (1976).

Plaintiff argues that the Commission erred in its application of the reasonableness test, which it summarized in finding of fact 18. According to Plaintiff, the “Commission operated under a misapprehension of the reasonableness test and focused only on the medical testimony of Drs. Connor and Loeffler and their testimony that it was a relatively low risk procedure with a high rate of success.” Plaintiff contends that the Commission “failed to factor in Plaintiff’s subjective fear of the procedure, his testimony that he was essentially pain free[,] and the testimony of Dr. Connor and Loeffler that it was reasonable for him to decline surgery under these circumstances.” Defendants respond: “A patient’s personal assessment of whether a surgery is reasonable or not has no bearing on the reasonableness standard and there is no prong of the [reasonableness] test that takes subjective feelings into account.” We agree with Defendants. As discussed below, the Commission’s opinion and award accurately states the law regarding the reasonableness test. Additionally, competent evidence supports the Commission’s finding that Plaintiff’s refusal to undergo the Recommended Surgery was unreasonable.

In *Watkins v. City of Asheville*, 99 N.C. App. 302, 392 S.E.2d 754 (1990), the Commission entered an opinion and award denying further benefits to a plaintiff who declined a back surgery recommended by her orthopedic surgeon. In the opinion and award, the Commission found that “the surgery recommended by [the] plaintiff’s physician ha[d] a high probability of significantly reducing the period of [the] plaintiff’s disability and would be sought by a similarly situated reasonable man.” *Id.*

at 304, 392 S.E.2d at 756. This Court affirmed the Commission's decision and explained that:

[t]here is ample evidence to support [the] plaintiff's arguments and his valid concerns about this surgical procedure. However, there is sufficient evidence under the previously stated principles of law to support the Commission's determination that the surgery is not of serious magnitude and risk, does not involve much pain and suffering and is not of uncertain benefit to [the] plaintiff.

Id. at 306, 392 S.E.2d at 757. The Court ultimately held that "[b]ased upon the Legislature's intent to authorize the Commission upon proper findings to require [the] plaintiff to undergo that surgery or lose his right to compensation, we must affirm no matter how seemingly valid [the] plaintiff's reasons are for refusing to submit to surgery." *Id.*

Here, in reviewing the reasonableness test applied by the Commission, we start with its first factor – whether the Recommended Surgery is of high magnitude and risk. *Crawley*, 31 N.C. App. at 290, 229 S.E.2d at 329. In *Watkins*, this Court explained that the surgery the plaintiff was to undergo was ultimately not of serious magnitude and risk because it was a common surgery; the surgeon had performed it many times; the plaintiff was not of a higher risk than other patients; and the risks were similar to that of most surgical procedures. 99 N.C. App. at 305, 392 S.E.2d at 757. Here, Dr. Loeffler testified that the Recommended Surgery was low risk and that Plaintiff was not at a heightened risk of post-operative complications. Dr.

Loeffler testified that approximately “95% of what [he does] is upper extremity.” Dr. Connor explained that he annually performed hundreds of shoulder surgeries and had no reason to believe that Plaintiff was not a prime candidate for the Recommended Surgery. Thus, both doctors had significant prior experience in performing the Recommended Surgery and neither doctor had reason to believe that the Recommended Surgery’s risks would be any higher for Plaintiff. The Commission’s finding that the Recommended Surgery was not of serious magnitude and risk is supported by competent evidence.

The reasonableness test’s second factor is whether the surgery involves pain and suffering. *Crawley*, 31 N.C. App. at 290, 229 S.E.2d at 329. In *Watkins*, this Court held that a surgery involving considerable but short-lived pain did not qualify as involving much pain and suffering. 99 N.C. App. at 305-06, 392 S.E.2d at 757. Here, Dr. Loeffler testified that he would not be surprised if Plaintiff continued to have shoulder pain without the Recommended Surgery, despite Plaintiff’s testimony that he had learned how to “avoid the dangerous motions.” Plaintiff also testified that his injured arm was weaker and that he continued to take medication to treat pain and discomfort. Dr. Connor testified that if Plaintiff continued to refuse surgery, he would designate Plaintiff at “maximum medical improvement.” He explained that the Recommended Surgery’s typical recovery period was four to six months, with pain coming and going throughout that period. Although Plaintiff would likely experience some degree of pain throughout the recovery period, there is competent evidence to

support the Commission's finding that the Recommended Surgery does not involve much pain and suffering.

Finally, we address the reasonableness test's third factor – whether the Recommended Surgery was of uncertain benefit. *Crawley*, 31 N.C. App. at 290, 229 S.E.2d at 329. In *Watkins*, this Court held that a surgeon's testimony that the plaintiff's condition would improve after surgery constituted competent evidence that the surgery was not of uncertain benefit, even though the surgeon testified that the plaintiff had valid concerns and that some parties had uncertain outcomes. 99 N.C. App. at 305-06, 392 S.E.2d at 756-57. Here, Dr. Loeffler testified that there was an 80-90% chance of improvement in Plaintiff's shoulder upon undergoing the Recommended Surgery; Dr. Connor testified that Plaintiff had an 85-90% of his pain being minimal or resolved if he underwent the Recommended Surgery. Although the Recommended Surgery's benefits can never be completely certain, both doctors projected a high likelihood that Plaintiff's shoulder would significantly improve should he undergo the Recommended Surgery. There is competent evidence tending to show that the Recommended Surgery is not of uncertain benefit.

In sum, the Commission's finding that the Recommended Surgery was not of serious magnitude or risk, did not involve much pain or suffering, and was not of uncertain benefit is supported by competent evidence. The Commission accurately applied the three-prong reasonableness test when determining whether Plaintiff's refusal to undergo the Recommended Surgery was reasonable. And, although

Plaintiff may be fearful of the Recommended Surgery, the reasonableness test is measured by “a reasonable person who is motivated to improve his or her health” and may not reflect all individual fears. *Johnson*, 123 N.C. App. at 225, 472 S.E.2d at 590. We reject Plaintiff’s argument.

III. Conclusion

The Commission properly applied the law regarding the reasonableness test when it determined that Plaintiff’s refusal to undergo the Recommended Surgery was unreasonable. Finding of fact 18 is supported by competent evidence. That finding, along with the Commission’s nineteen other findings of fact, support the Commission’s conclusion that Plaintiff must undergo the Recommended Surgery or face the cessation of his total disability benefits. Therefore, we affirm the Commission’s opinion and award.

AFFIRMED.

Judges WOOD and MURRY concur.

Report per Rule 30(e).