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NO. COA01-1507

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

MERLIN U. SMITH,
Employee,
Plaintiff,

v.

KEN NOWLIN TRUCKING,
Employer,

N.C. Industrial Commission
I.C. No. 935400

and

KEY BENEFIT SERVICES,
Carrier,
Defendants.

Appeal by defendants from Opinion and Award filed 13 September 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 29 July 2002.

Gus L. Donnelly, for plaintiff-appellee Merlin U. Smith.

Morefield Kendrick Hess & Largen, by J.D. Morefield, for plaintiff-appellee Merlin U. Smith.

Orbock Bowden Ruark & Dillard, PC, by Barbara E. Ruark, for defendant-appellants.

BIGGS, Judge.

On 16 December 1998, plaintiff had been employed by defendant-employer for about three years. At approximately 6:00 a.m. on that date, plaintiff's wife lost control of defendant's tractor trailer while driving through Texas. Plaintiff, who was asleep in the

truck's sleeper compartment at the time, awakened when he heard his wife scream. He was thrown around in the sleeper compartment as the truck slid and turned over on its side. His wife, who sustained injuries in the crash, received treatment in a local hospital's emergency room. Plaintiff informed defendant's owner of the accident and of his wife's injuries. He only reported that he had been "shaken up" and later testified that he thought the pain from his injuries would go away.

On 15 January 1999, plaintiff first sought medical treatment. He complained of experiencing pain in his back and legs and of an inability to sleep since being involved in the 16 December 1998 crash. He received prescriptions for medications and an excuse from work. On 27 January 1999, plaintiff was seen by Dr. Jacinto C. Alvarado with complaints of pain in his low back and left lower extremity. He received periodic evaluations from Dr. Alvarado thereafter, and Dr. Alvarado ultimately extended plaintiff's excuse from work through 21 April 1999. Plaintiff also received prescription medications for depression and anxiety.

Defendant filed a compensation claim on 4 March 1999, which the defendant-carrier denied. Deputy Commissioner John A. Hedrick heard the claim on 13 August 1999. A psychiatrist, Dr. Marilou V. Inocalla, testified in a deposition that plaintiff began receiving treatment from her and therapy from a licensed clinical social worker, Johnette Shabazz, on 12 March 1999. Plaintiff was seen by Dr. Inocalla on five occasions, and Ms. Shabazz for approximately eleven office visits. When asked her opinion as to what injuries

plaintiff had sustained in the 16 December 1998 accident, Dr. Inocalla attributed plaintiff's post-traumatic stress disorder, depression and anxiety to the accident. She opined that plaintiff had been unable to work after the accident as a result of his psychiatric condition.

A psychologist, Dr. Verne G. Schmickley, performed an independent psychological evaluation of plaintiff on 14 September 1999 at defendant's request. Although he had requested some of plaintiff's medical records, Dr. Schmickley had not received those records at the time of the evaluation and did not ever receive any of the records to his knowledge. Dr. Schmickley spent "a few" hours testing and observing plaintiff. He stated plaintiff's results from the Minnesota Multiphasic Personality Inventory II (MMPI II) were either exaggerated or indicated plaintiff had major psychological problems. Dr. Schmickley opined that plaintiff had a somatoform disorder and a depressive disorder. He stated plaintiff probably was not able to work as of the date of the evaluation given the nature of his problems. When asked if he made any determination that plaintiff's inability to work on that date was related to the accident, Dr. Schmickley replied "no." Dr. Schmickley stated plaintiff's somatoform disorder was not causally related to the accident, but could not say if the depressive disorder had been aggravated or exacerbated by the accident. He also opined that plaintiff was unable to work as a result of his psychiatric condition.

In an opinion and award filed on 14 July 2000, the deputy

commissioner found plaintiff had sustained a compensable injury by accident and awarded temporary total disability compensation. Defendants gave notice of appeal, and the Full Commission reviewed the matter on 26 March 2001. The Full Commission found that plaintiff's post-traumatic stress syndrome, depression and anxiety "were caused, accelerated or aggravated by the incident on 16 December 1998," that plaintiff had "not reached maximum medical improvement," and that "[a]s a result of the incident on 16 December 1998, plaintiff was rendered incapable of earning wages from defendant or any other employer from 15 January 1999 through the date of the hearing." On the basis of these and other findings of fact, the Full Commission concluded plaintiff has sustained an injury by accident and was entitled to temporary total disability compensation. From the Full Commission's Opinion and Award, defendants appeal.

Defendants contend "plaintiff's alleged psychiatric condition was not caused or aggravated by the December 16, 1998 accident." They argue that plaintiff's psychiatric symptoms are not supported by any competent medical evidence and that his diagnosis is based solely upon his personal subjective accounts. We are not persuaded by defendants' argument.

The standard of review of a workers' compensation case is whether there is any competent evidence in the record to support the Full Commission's findings of fact, and whether those findings support the Full Commission's conclusions of law. *Sidney v. Raleigh Paving & Patching*, 109 N.C. App. 254, 256, 426 S.E.2d 424

(1993). In weighing the evidence, the Full Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Russell v. Lowes Product Distribution*, 108 N.C. App. 762, 765, 425 S.E.2d 454 (1993). "Moreover, if the evidence before the Commission is capable of supporting two contrary findings, the determination of the Commissioner is conclusive on appeal." *Hunt v. Scotsman Convenience Store*, 95 N.C. App. 620, 622, 383 S.E.2d 390, 391, *disc. review denied*, 325 N.C. 707, 388 S.E.2d 456 (1989).

Our review of the record reveals that Dr. Inocalla in her deposition testimony described plaintiff as having post-traumatic stress syndrome, depression and anxiety, which she indicated in her opinion were causally related to the 16 December 1998 accident. Plaintiff was seen at Mount Rogers Community Mental Health Center by either Dr. Inocalla or Ms. Shabazz on sixteen different dates between 12 March 1999 and 10 January 2000. Competent evidence in the form of Dr. Inocalla's testimony supports the Full Commission's findings of fact regarding plaintiff's psychiatric condition and its causation. While Dr. Schmickley expressed a contrary opinion as to causation based upon his three-to-four hour evaluation of plaintiff which he conducted nine months after the accident, both he and Dr. Inocalla opined that plaintiff was incapable of working through the date of the hearing due to his psychiatric condition. The Full Commission's findings that plaintiff's psychiatric condition was caused, accelerated or aggravated by the 16 December 1998 accident and that he had been rendered incapable of earning

wages from 15 January 1999 through the date of the hearing, which are based upon competent evidence in the form of Dr. Inocalla's testimony, are conclusive. See *Hunt*, 95 N.C. App. at 622, 383 S.E.2d at 391. Those findings in turn support the Full Commission's conclusions that "plaintiff sustained an injury by accident arising out of and in the course of his employment with defendant" and that "plaintiff is entitled to payment of temporary total disability compensation. . . ." See *id.* Accordingly, the Opinion and Award of the Full Commission is

Affirmed.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).