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NO. COA02-1546

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

FRANCES FAYE ASHLEY,

Employee-Plaintiff,

v.

From N.C. Industrial Commission
I.C. File Nos.:
022164, 270062 & 506551

BUSTER BROWN APPAREL,
Employer,

LIBERTY MUTUAL INSURANCE COMPANY,
and/or

GATEWAY HOSIERY MILLS,
Employer,

OHIO CASUALTY GROUP,
or
KEMPER INSURANCE COMPANY,
or
BUSINESS INSURANCE COMPANY,
Carriers-Defendants.

Appeal by Defendants from an Opinion and Award filed 2 August 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 September 2003.

Raymond M. Marshall, for plaintiff-employee.

Davis & Hamrick, L.L.P., by Ann C. Rowe, for defendants-appellees Liberty Mutual Insurance Company and Buster Brown Apparel.

Orbock, Bowden, Ruark & Dillard, P.C., by Barbara E. Ruark, for defendant-appellants Gateway Hosiery Mills and Kemper Insurance Company.

WYNN, Judge.

Defendants Gateway Hosiery Mills (employer) and Kemper Insurance Company (carrier) appeal from an Opinion and Award of the North Carolina Industrial Commission favoring Francis Faye Ashley (employee). The issues on appeal are: (I) Did Plaintiff establish by competent evidence that her carpal tunnel syndrome condition was "related to her employment" with Gateway Mills; (II) If so, was Plaintiff's condition a continuation of injuries previously accepted by Liberty Mutual Insurance Company; and (III) Was there competent evidence to support the Commission's finding that Plaintiff suffered a last injurious exposure during the time Kemper Insurance Company was the carrier on the risk. After careful review, we affirm the Commission's Opinion and Award.

Frances Faye Ashley worked at Gateway Mills¹ sewing the seams at the toes of socks. The job required her to reach into a pipe hole to get the socks; put it over a rod; operate a vacuum pump with her knee to suck the sock inside out; sew the sock seam; place the sock back over the rod and operate the vacuum to get the sock right side out again so that she could inspect the seam. Since her compensation was based solely on her level of production, she had to complete this process for each sock within approximately ten seconds to earn a reasonable rate of pay.

In the Opinion and Award of benefits to Ms. Ashley, the Commission found that in 1992 Dr. Dunaway, an orthopedic surgeon,

¹ The hosiery company has changed names multiple times since the beginning of Ms. Ashley's employment, hence the multiple defendants, including Buster Brown Apparel.

diagnosed and treated Ms. Ashley for work-related carpal tunnel syndrome. He performed endoscopic surgery to both of her hands in separate operations; afterwards, she returned to work. The Commission found Dr. Dunaway indicated the plaintiff would have reached maximum medical improvement in 1993 with no permanent partial impairment. However, in 1995, plaintiff developed recurrent symptoms and returned to Dr. Dunaway. This time he performed an open carpal tunnel release on her right wrist, but the surgery did not alleviate the pain in her wrist. Nonetheless, at plaintiff's request, Dr. Dunaway allowed her to return to work in July 1995; but after a short period, she went on sick leave for an ailment unrelated to this appeal. She returned in October 1995 and Dr. Dunaway continued to follow her recovery until March 1996 at which time he released her at maximum medical improvement.

The Commission found:

8. On March 29, 1996, Dr. Dunaway released plaintiff at maximum medical improvement. Again Dr. Dunaway did not address the issue of permanent partial impairment. In retrospect, however, he advised that plaintiff would have a ten percent permanent partial disability to each hand. Defendants Buster Brown and Liberty Mutual never paid compensation to plaintiff for permanent compensation.

9. . . ., defendants Buster Brown and Liberty Mutual admitted liability for benefits under the Workers' Compensation Act for the 1995 episode of carpal tunnel syndrome pursuant to a Form 21 agreement which was approved by the Industrial Commission. Liberty Mutual paid compensation for temporary disability from January 14 through June 25, 1995. However, Liberty Mutual did not pay any compensation to plaintiff for temporary partial disability or for permanent partial disability, either for her impairment rating or for her loss of earning capacity.

The Commission further found that between 1996 and 1999, Ms. Ashley did not complain of carpal tunnel symptoms, but did suffer from and receive treatment for other medical conditions including uncontrolled diabetes causing peripheral neuropathy, morbid obesity, boils, breast abnormalities and unconfirmed Multiple Sclerosis. Regarding plaintiff's carpal tunnel syndrome condition, the Commission found:

14. On January 12, 2000 plaintiff returned to Dr. Dunaway stating that her hands were miserably uncomfortable. Her left hand was more symptomatic than her right hand at the time. Consequently, Dr. Dunaway took plaintiff out of work and recommended surgery to her left wrist which would involve an open release of the carpal tunnel. However, plaintiff could not have the operation without authorization for the surgery under workers' compensation and by that time the hosiery company had been sold to [Gateway Mills], who had insurance coverage with three different companies over the course of the previous three years. Liberty Mutual would not accept liability for the claim since it was no longer the carrier on the risk and since plaintiff probably had had an injurious exposure subsequent to its coverage period. Gateway and its carriers also denied liability for the claim. Consequently, plaintiff did not receive further care.

Thereafter, the Commission concluded:

3. Plaintiff is entitled to compensation for temporary partial disability . . . from June 26 through December 1995.

4. Having elected to receive compensation for actual wage loss in lieu of her rating, plaintiff is entitled to compensation for permanent partial disability

5. Plaintiff is entitled to have defendants provide all medical compensation arising from her occupational disease, including the prescription medicine arising from the occupational disease but excluding treatment for her depression.

6. In that plaintiff sustained another injurious exposure to the hazards of her carpal tunnel syndrome in

1999, defendants Gateway and Kemper are liable for the workers' compensation benefits arising from the aggravation of and/or recurrence of her carpal tunnel syndrome in January 2000.

Based upon its findings of fact and conclusions of law, the Commission entered the following Award:

1. . . . Defendants Buster Brown and Liberty Mutual shall pay compensation to plaintiff for temporary partial disability . . . for 27 weeks after June 25, 1995. . . .

2. . . . Defendants Buster Brown and Liberty Mutual shall pay compensation to plaintiff for permanent partial disability . . . from January 1, 1996 through December 31, 1996, . . . from January 1, 1997 through December 31, 1997 . . . from January 1, through December 31, 1998 . . . from January 1, 1999 until the end of the 300-week period.

3. . . . Defendants Buster Brown and Liberty Mutual shall pay all medical expenses incurred by plaintiff as a result of this occupational disease

4. . . . Defendants Gateway and Kemper shall pay compensation to plaintiff . . . from January 12, 2000 through April 30, 2001 and continuing thereafter until she returns to work or until further order of the Commission.

5. . . . Defendants Gateway and Kemper shall pay all medical expenses incurred by plaintiff as a result of this occupational disease

From the Commission's Opinion and Award, defendants Gateway Hosiery Mills and Kemper Insurance Company appeal.²

Preliminarily, we note that our review of an appeal from an Opinion and Award of the Industrial Commission is "limited to reviewing whether any competent evidence supports the Commission's

²The record shows that Buster Brown Apparel and Liberty Mutual Insurance Company initially filed a Notice of Appeal but subsequently withdrew it.

findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). Thus, in reviewing a workers' compensation claim, 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) To put it simply, our Supreme Court directs that if there is any evidence at all the finding of fact stands, even if there is substantial evidence going the other way. *Id.* Under this standard, this Court cannot undertake a new evaluation of the facts; that responsibility is the Commission's alone.

On appeal, Defendants contend that "Plaintiff failed to establish by the greater weight of evidence that her employment caused her current carpal tunnel syndrome." We disagree. As stated in the facts of this opinion, the Commission made numerous findings regarding Plaintiff's carpal tunnel syndrome and her work place. Indeed, Dr. Dunaway offered testimony attributing Plaintiff's carpal tunnel syndrome directly to her work at the mill. He testified that her employment materially aggravated her preexisting carpal tunnel syndrome in 1995 and 2000. In short, the record contains evidence to support the Commission's findings and conclusion that Plaintiff met her burden of proving the compensability of her claim.

Defendants next contend that (1) even if Plaintiff developed an occupational disease, her condition was a continuation of her occupational disease accepted by Liberty Mutual, and (2) Plaintiff did not suffer a last injurious exposure during the time Kemper Insurance was the carrier on the risk. In essence, Defendants contend the Commission's findings of fact to the contrary are not supported by the evidence, and therefore, its conclusions of law are not supported by proper findings of fact. We disagree.

As a finding of fact, the Commission determined "plaintiff was last injuriously exposed to the hazards of carpal tunnel syndrome during 1999 when Kemper Insurance Company (Kemper) was the carrier on the risk." This finding is supported by evidence that Plaintiff did not complain of pain in her wrists and hands prior to 1999. Dr. Dunaway testified that Plaintiff had reached a maximum medical improvement from her 1992 and 1995 injuries. This evidence is sufficient to justify the Commission's finding of fact that Kemper and not Liberty Insurance Company was the carrier of risk when Plaintiff was last injuriously exposed to activities causing carpal tunnel syndrome.

In sum, since the record shows competent evidence to support the Commission's findings of fact which in turn support the conclusions of law, this Court is not authorized to upset the Opinion and Award of the Commission. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). Accordingly, the Commission's Opinion and Award is,

Affirmed.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).