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NO. COA02-580

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

CLARA A. WILLIAMS,
Employee-Plaintiff,

v.

North Carolina
Industrial Commission
No. 675222

SARA LEE CORPORATION,
Self-Insured,
Employer-Defendant,

and

CONSTITUTION STATE SERVICES COMPANY,
Servicing Agent-Defendant.

Appeal by plaintiff from Opinion and Award entered 2 November 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 28 October 2002.

Lawrence, Rigsbee & Best, P.A., by Natarlin R. Best, for plaintiff-appellant.

Orbock Bowden Ruark & Dillard, P.C., by Kent C. Ford, for defendant-appellee.

EAGLES, Chief Judge.

Plaintiff Clara A. Williams (plaintiff) appeals from the Full Commission's Opinion and Award denying her workers' compensation benefits. In 1996, plaintiff was working at defendant Sara Lee Corporation (defendant-employer) in its danish and muffin department. On 30 April 1996, plaintiff saw the company nurse

about pain in her shoulder and, on 1 May 1996, began a medical leave of absence from defendant-employer. Plaintiff subsequently filed a claim seeking to recover benefits for occupational disease she developed in her hands, arms, neck and shoulders.

After defendant-employer denied plaintiff's claim for workers' compensation benefits, Deputy Commissioner Chrystal Redding Stanback conducted a hearing on the matter. Deputy Stanback denied plaintiff coverage under the Workers' Compensation Act, finding that plaintiff failed to present competent evidence that "[her] position at Sara Lee Corporation placed her at an increased risk of developing and/or caused her to develop any occupational disease."

On appeal, the Full Commission affirmed the deputy commissioner's decision. In its Opinion and Award, the Full Commission found, in pertinent part:

4. On May 7, 1996, plaintiff was seen by Dr. Greig McAvoy and complained of a several month history of hand pain and more recent shoulder pain. Based upon these complaints, Dr. McAvoy ordered EMG/NCV studies. According to Dr. McAvoy's notes, plaintiff's EMG/NCV studies were normal.

5. On May 28, 1996, Dr. McAvoy's impression was that plaintiff was suffering from cervical radioculopathy on the left. Dr. McAvoy ordered an MRI scan of plaintiff's cervical spine. On June 11, 1996, Dr. McAvoy reported that plaintiff's MRI scan was normal. After examining plaintiff, Dr. McAvoy indicated that plaintiff could return to full duty employment effective June 24, 1996.

6. On June 28, 1996, plaintiff returned to Dr. McAvoy and continued to complain of shoulder pain. Dr. McAvoy performed a subacromial injection, after which plaintiff experienced immediate improvement. Dr. McAvoy

released plaintiff to return to work on July 2, 1996.

7. On July 22, 1996, plaintiff returned to Dr. McAvoy complaining of numbness in the left hand. After examining plaintiff, Dr. McAvoy's impression was that plaintiff was suffering from left rotator cuff tendonitis and mild bilateral carpal tunnel syndrome. Dr. McAvoy further indicated that his June 28, 1996, note was still in effect and that plaintiff could return to regular duty work.

8. Despite her release to return to work, plaintiff remained out of work on a leave of absence from July 26, 1996 until April 15, 1997.

9. On multiple occasions between July 12, 1996 and April 14, 1997, plaintiff was seen by Dr. James Bryant at Bryant Family Practice in Rocky Mount. On September 17, 1996, Dr. Bryant referred plaintiff to Carolina Neurology for EMG and NCV studies. According to the Carolina Neurology report of November 22, 1996, plaintiff's EMG/NCV studies were normal with no evidence of carpal tunnel syndrome.

10. On January 31, 1997, plaintiff returned to Dr. McAvoy continuing to complain of left hand and arm pain. According to Dr. McAvoy's notes, plaintiff had negative Tinel's and Phalen's tests and his impression was that plaintiff was suffering from left rotator cuff tendonitis/bursitis. Dr. McAvoy indicated that plaintiff could return to regular duty work.

11. On April 8, 1997, plaintiff returned to Dr. Bryant. After examining plaintiff, Dr. Bryant indicated that plaintiff could return to work on April 14, 1997. Plaintiff actually returned to work on April 15, 1997 and April 17, 1997, but then began another medical leave of absence effective April 18, 1997. Plaintiff last worked for defendant on April 17, 1997.

12. On March 26, 1998, plaintiff was seen by Dr. Richard Moore at Duke University Hospital. After examining plaintiff, Dr. Moore's

impression was that Plaintiff was suffering from left subacromial bursitis. Based upon plaintiff's shoulder complaints, Dr. Moore injected plaintiff's left shoulder.

13. On July 29, 1998, plaintiff returned to Dr. Moore indicating that her shoulder problem had resolved but she was now experiencing pain throughout her left hand as well as back pain which radiated down her right leg. After examining plaintiff, Dr. Moore's impression was that plaintiff was suffering from migratory synovitis and he ordered a rheumatologic work-up.

14. On September 17, 1998, Dr. Moore indicated that plaintiff was suffering from rheumatoid arthritis, and he referred plaintiff to a rheumatologist for further evaluation and treatment.

15. On November 6, 1998, plaintiff was seen by Dr. Nicholas Patrone at the Boice Willis Clinic. After examining plaintiff, Dr. Patrone's impression was that plaintiff was suffering from lupus or some other vascular disease. Dr. Patrone also indicated that plaintiff was suffering from early rheumatoid arthritis.

16. On November 30, 1998, Dr. Patrone indicated that plaintiff's current problems "looks more like a rheumatoid arthritis picture."

17. On June 8, 1999, plaintiff returned to Dr. McAvoy with a possible diagnosis of rheumatoid arthritis. Upon examination, Dr. McAvoy noted full range of motion of the upper extremities, no muscle wasting and no objective abnormalities. According to Dr. McAvoy's notes, plaintiff did not have carpal tunnel syndrome.

18. The evidence of record fails to establish that plaintiff has sustained a compensable occupational disease. There is no competent evidence that plaintiff's employment with defendant placed her at an increased risk of developing an occupational disease or caused her to develop an occupational disease. The greater weight of the medical evidence

establishes that plaintiff probably has rheumatoid arthritis, or perhaps lupus. Objective medical studies have negated carpal tunnel syndrome, cervical herniated disc, or other abnormality that may be associated with repetitive trauma. There is no evidence that plaintiff's rheumatoid arthritis is related to her employment with defendant. Dr. McAvoy's record dated June 8, 1999, relates that plaintiff told him that her symptoms had been present since her employment with defendant, but Dr. McAvoy advised her that her employment had "no relationship to her symptoms."

Based on these findings, the Full Commission concluded that plaintiff had not proven by the greater weight of the competent evidence that she sustained a compensable occupational disease and denied plaintiff's claim for benefits. Plaintiff appeals the Full Commission's Opinion and Award.

In her sole assignment of error, plaintiff contends the Commission erred in concluding she had not suffered a compensable occupational disease. Our review of an opinion and award of the Commission is limited to the determination of (1) whether the findings of fact are supported by any competent evidence in the record; and (2) whether the findings support the Commission's conclusions of law. *Allen v. Roberts Elec. Contr'rs*, 143 N.C. App. 55, 60, 546 S.E.2d 133, 137 (2001). The Commission's findings of fact are conclusive on appeal where supported by any competent evidence, notwithstanding the existence of evidence which would support findings to the contrary. *Id.*

To establish a right to workers' compensation benefits for an occupational disease under N.C. Gen. Stat. § 97-53(13), the employee must show: (1) the disease is characteristic of

individuals engaged in the particular trade or occupation in which the claimant is engaged; (2) the disease is not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and (3) there is a causal relationship between the disease and the claimant's employment. *Rutledge v. Tultex Corp.*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983). The third element of the test is satisfied if the employment "significantly contributed to, or was a significant causal factor in, the disease's development." *Id.* at 101, 301 S.E.2d at 369-70. For the employment to constitute a "significant" contributing factor, the employee must show that without it the occupational disease "would not have developed to such an extent that it caused the physical disability which resulted in claimant's incapacity for work." *Baker v. City of Sanford*, 120 N.C. App. 783, 788, 463 S.E.2d 559, 563 (1995) (quoting *Rutledge v. Tultex Corp.*, 308 N.C. 85, 102, 301 S.E.2d 359, 370 (1983)), *disc. review denied*, 342 N.C. 651, 467 S.E.2d 703 (1996).

In this case, the Commission considered plaintiff's testimony along with plaintiff's medical records from physicians who evaluated plaintiff: Dr. Greig McAvoy, Dr. James Bryant, Dr. Richard Moore and Dr. Nicholas Patrone. Dr. McAvoy and Dr. Bryant ordered EMG/NCV studies which were normal. Dr. McAvoy noted that plaintiff did not have carpal tunnel syndrome. Dr. Moore and Dr. Patrone diagnosed that plaintiff was suffering from rheumatoid arthritis and medical records did not show that plaintiff's arthritis was related to her work. As a result, plaintiff failed

to meet all of the requirements of compensable occupational disease, as set forth in the *Rutledge* case. Competent evidence exists to support the Commission's findings of fact and those findings support its conclusion of law in denying plaintiff benefits. Accordingly, we affirm the decision of the Commission.

We do not address plaintiff's second and third arguments in her brief because they do not correspond to any assignment of error set out in the record in violation of North Carolina Rules of Appellate Procedure. See N.C.R. App. P. 10(a).

Affirmed.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).