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NO. COA10-161

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

CHERYL ANN BLAKE,
Employee,
Plaintiff-Appellee,

v.

Industrial Commission
Nos. 773176 and 781740

CREE, INC.,
Employer,

TRAVELERS,
Carrier,
Defendants-Appellants.

Appeal by Defendants from opinion and award entered 19 November 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 1 September 2010.

Cheryl Ann Blake, Plaintiff-Appellee, pro se.

Cranfill Sumner & Hartzog LLP, by J. Michael Ricci and Meredith Taylor Berard, for Defendants-Appellants.

McGEE, Judge.

Cheryl Ann Blake (Plaintiff) worked for Cree, Inc. (Cree) as a semi-conductor production worker. Plaintiff alleged that, as a result of her employment with Cree, she developed bilateral carpal tunnel syndrome on or about 1 May 2007. Plaintiff filed a Form 19 workers' compensation claim on 7 June 2007, which was denied by Cree on that same date. Cree and its insurance carrier, Travelers Insurance Co. (Travelers) (collectively Defendants), along with

Plaintiff, attended a mediation of Plaintiff's claim on 15 April 2008, but the mediation was unsuccessful. However, after further negotiations, Plaintiff and Defendants agreed upon a final settlement of Plaintiff's claim. Defendants sent Plaintiff a draft agreement on 10 July 2008. Plaintiff's counsel, Joseph Baznik (Baznik), returned the draft agreement to Defendants with requested changes. Plaintiff signed an Agreement of Final Settlement and Release (the Clincher Agreement) on 8 August 2008. On that same date, Plaintiff also signed an Agreement and General Release (the general release agreement). Pursuant to the Clincher Agreement, Plaintiff agreed to accept approximately \$15,000.00 as settlement for all Plaintiff's potential workers' compensation claims against Defendants prior to 20 June 2008. The Clincher Agreement specifically stated: "That all parties agree that no rights, other than those arising under the provisions of the Workers' Compensation Act, are compromised or released by the execution of [the Clincher Agreement]." Pursuant to the general release agreement, Plaintiff "waived any rights she had to pursue any type of employment law claim against [Cree] and agreed to terminate her employment and not seek re-employment with [Cree]." In return, Defendants agreed to waive Plaintiff's share of the mediation expenses.¹

¹ We note, however, that the Clincher Agreement states "Defendant-Insurer, on behalf of Defendant-Employer, agrees to pay all costs incurred." This clause in the Clincher Agreement raises questions concerning the consideration provision of the general release agreement. That issue is not before us at this time.

Defendants submitted the Clincher Agreement to the Commission on 14 August 2008 for approval pursuant to N.C. Gen. Stat. § 97-17. Plaintiff submitted a letter on 20 August 2008 requesting that the Commission disapprove the Clincher Agreement because Plaintiff believed the agreement was not the one she had signed. Defendants filed a Motion to Enforce Settlement Agreement and a Form 33 on 15 September 2008, requesting enforcement of the Clincher Agreement. The sole issue before the deputy commissioner was "whether the [Clincher Agreement] should be enforced[.]" A hearing was held on 10 November 2008 and both Plaintiff and Baznik testified. Baznik testified that he had thoroughly explained both agreements to Plaintiff before she signed them. Plaintiff testified that Baznik did not make her aware that she was signing a general release agreement, and that she believed she was signing two copies of the Clincher Agreement. Plaintiff testified that the first time she became aware of the general release agreement was when she later returned to Baznik's office to pick up her copy of the Clincher Agreement, and was also given a copy of the general release agreement. At the hearing, Plaintiff argued that the general release agreement was a material part of the Clincher Agreement, i.e. that Defendants would not have signed the Clincher Agreement if Plaintiff had refused to sign the general release agreement. Plaintiff testified that she would not have signed the Clincher Agreement had she known she also had to sign the general release agreement.

Deputy Commissioner J. Brad Donovan filed an opinion and award on 20 April 2009, and found that "Plaintiff specifically admitted that she felt the workers' compensation settlement was reasonable and fair[,] but that Plaintiff "claimed she did not intend to release [Cree] from claims other than the workers' compensation matter." The deputy commissioner then found that:

A review of the Clincher Agreement fails to reveal any reference to the employment separation agreement or to base any of the settlement of the workers' compensation claim upon a separation of employment. Rather, regarding waiver of claims the [Clincher] Agreement states only that [P]laintiff waives any claims "for workers' compensation benefits of any nature, whether such claims are referenced with particularity herein or not." Further, the [Clincher] Agreement expressly states that "all parties agree that no rights, other than those arising under the provisions of the Workers' Compensation Act, are compromised or released by the execution of this agreement."

Based upon his findings of fact, the deputy commissioner concluded that the Clincher Agreement was valid, as "there is no argument that the Clincher Agreement is not the result of a meeting of the minds." The deputy commissioner further concluded that: "The only issue raised by [P]laintiff is the alleged unfairness of the [general release agreement], a wholly separate document that is not referenced in or made a part of the Clincher Agreement and over which the Industrial Commission lacks jurisdiction." The deputy commissioner concluded that the Clincher Agreement was an enforceable contract, and that:

No evidence has been submitted in contradiction of this conclusion. However, it is noted that the [Clincher] Agreement has not

as yet been approved by the Commission. Accordingly, any deficiencies in the documentation accompanying the Clincher [Agreement] may yet need to be addressed upon submission of the [Clincher] Agreement and required documents for approval.

Based on those conclusions, the deputy commissioner denied Plaintiff's claim to have the Clincher Agreement set aside as unenforceable.

Plaintiff appealed to the Commission by letter dated 5 May 2009. The Commission reviewed the deputy commissioner's opinion and award on 28 September 2009, and filed its own opinion and award on 19 November 2009. The Commission limited its opinion and award to determining "whether the [Clincher Agreement] should be enforced[.]" However, the Commission disapproved the Clincher Agreement on the basis that the Clincher Agreement was "not fair and just" as required by N.C. Gen. Stat. § 97-17(b)(1). The Commission found that: "Plaintiff . . . testified that she did not intend to release Defendants from claims other than the workers' compensation matter. The . . . Commission finds Plaintiff's testimony to be credible." The Commission also found that Plaintiff contended that the Clincher Agreement should be rejected because "the accompanying documents to the [C]lincher [Agreement] failed to include a list of outstanding medical bills." Defendants appeal.

Defendants argue that the Commission's conclusions of law "are not supported by competent findings of fact and are contrary to basic principles of contract law and the provisions of G.S. § 97-17." We agree that the findings of fact are insufficient to

support the conclusions of law, and remand for further action by the Commission.

According to N.C. Gen. Stat. § 97-17 (2009): "(a) [The Workers' Compensation Act] does not prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this Article." "The Commission shall not approve a settlement agreement under this section, unless [][:] (1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties . . . have been considered." N.C.G.S. § 97-17(b).

"A 'clincher' or compromise agreement is a form of voluntary settlement" recognized by the Commission and used to finally resolve contested or disputed workers' compensation cases. According to Workers' Compensation Rule 502: "All compromise settlement agreements must be submitted to the Industrial Commission for approval. Only those agreements deemed fair and just and in the best interest of all parties will be approved." Workers' Comp. R. of N.C. Indus. Comm'n 502(1) 2009 Ann. R. (N.C.) 996.

Chaisson v. Simpson, 195 N.C. App. 463, 474, 673 S.E.2d 149, 158 (2009) (internal citation omitted).

The Industrial Commission must review all compromise settlement agreements to make sure they comply with the Workers' Compensation Act and the Rules of the Industrial Commission, and to ensure that they are fair and reasonable. Pursuant to N.C. Gen Stat. § 97-17 (a) (2000), all workers' compensation settlement agreements must be filed with and approved by the Commission. This statute also states that "[t]he Commission *shall not approve* a settlement agreement . . . unless . . . [it] is deemed by the Commission to be *fair and just*." N.C. Gen Stat. § 97-17 (b) (1)

(emphasis added). N.C. Gen Stat. § 97-82 (2000) permits memoranda of agreement, subject to approval of the Commission, in certain cases and addresses payment and enforceability of such agreements. The Courts have applied these requirements to clincher agreements as well as those entered in ongoing cases, such as those involving Form 26.

The Commission is the "sole judge of the weight and credibility of the evidence." This Court thus limits its review to determining whether "any competent evidence" supports the Commission's findings of fact and whether these findings support the Commission's conclusions of law. However, we review the Commission's legal conclusions *de novo*. "[W]hen the findings are insufficient to determine the rights of the parties, the court may remand to the Industrial Commission for additional findings."

Smythe v. Waffle House, 170 N.C. App. 361, 364, 612 S.E.2d 345, 348 (2005) (internal citations omitted).

The issue before the Commission was "whether the compromise settlement agreement dated June 20, 2008 and signed by the parties on August 8, 2008 should be enforced[.]" This issue is not the same as whether the Clincher Agreement should be approved by the Commission, which includes the "fair and just" analysis.² The Commission made the following relevant findings of fact:

3. On June 20, 2008, the parties negotiated a final settlement of this case for a total of

² It is clear the deputy commissioner issued his opinion and award understanding this difference, as he specifically stated in his opinion and award "that the [Clincher Agreement] has not as yet been approved by the Commission. Accordingly, any deficiencies in the documentation accompanying the [Clincher Agreement] may yet need to be addressed upon submission of the [Clincher Agreement] and required documents for approval."

\$15,000.00 and exchanged correspondence confirming the terms of their agreement. The parties notified the North Carolina Industrial Commission of their settlement so that the claim could be removed from the Deputy Commissioner hearing docket.

4. On July 10, 2008, Defendants' counsel forwarded a draft of the Agreement of Final Settlement and Release [the Clincher Agreement] to Plaintiff's counsel at the time, Mr. Joseph Robert Baznik, for execution. Mr. Baznik requested various amendments to the clincher language prior to execution. On August 5, 2008, Defendants' counsel sent Mr. Baznik the amended [C]lincher [Agreement] which reflected the changes agreed upon by the parties.

5. On August 8, 2008, Plaintiff signed the [C]lincher [Agreement]. It appears from the evidence that Plaintiff also signed an Agreement and General Release, in which Plaintiff waived any rights she had to pursue any type of employment law claim against Defendant-Employer and agreed to terminate her employment and not seek re-employment with Defendant-Employer. In this document Defendants agreed to waive Plaintiff's share of the workers' compensation mediation fee as consideration to Plaintiff for signing the Agreement and Release.

6. On August 11, 2008, Mr. Baznik returned the [C]lincher [Agreement] and associated settlement documents and the Agreement and General Release to Defendants' counsel fully executed. On August 14, 2008, Defendants' counsel submitted the [C]lincher [Agreement] to the Industrial Commission for approval, along with accompanying exhibits, a proposed order approving the [C]lincher [Agreement], and Mr. Baznik's attorney fee contract.

7. On August 20, 2008, Plaintiff submitted a written request to the Industrial Commission that the [C]lincher [Agreement] be disapproved. Plaintiff stated the following in her letter:

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I recently signed an agreement and release in a settlement case with Cree Inc. I picked my copy up on 8-19-08. The agreement was signed on 8-8-08. The agreement typing and spacing appears to be different.

The sign off is on a separate [sic] page from the agreement itself and I feel a different agreement was attached. I expressed to my attorney that there were other legal aspect[s] with Cree that I wanted to pursue. He advised me to talk to EEOC whereas I wouldn't have to pay legal fees. But in the agreement and release it released the company Cree from any other obligations. My understanding was that it (agreement and release) released Cree from any obligations after the sign date for the worker compensation.

Cree terminated me for staffing reasons, due to my restricted work. I'm still having problems with my hands. My Attorney will not work with me. And stated everything was final based on the agreement. So, I had to take matters into my own hands. Please allow me to pull this agreement, on my belief of fraud.

. . . .

10. On September 15, 2008, Defendants filed a "Motion to Enforce Settlement Agreement" and a Form 33, requesting enforcement of the [C]lincher [Agreement]. At the hearing before the Deputy Commissioner, Attorney Robert T. Perry represented Plaintiff. Plaintiff testified that she was unaware that she was signing the Agreement and General Release, and instead believed she was signing two (2) copies of the same [C]lincher [Agreement]. Plaintiff further testified that she did not intend to release Defendants from claims other than the workers' compensation matter. The Full Commission finds Plaintiff's testimony to be credible. The Full Commission further notes that the [C]lincher [Agreement] was entitled "Agreement of Final Settlement and Release" and the other release was entitled

"Agreement and General Release" which could potentially be confusing.

The Commission made additional "findings of fact" that are, in reality, either conclusions of law or mixed findings of fact and conclusions of law. We treat findings as findings and conclusions as conclusions, no matter how they are labeled. *Carpenter v. Brooks*, 139 N.C. App. 745, 752, 534 S.E.2d 641, 646 (2000) (citations omitted). The facts found by the Commission in the last three findings of fact are all contained in finding eleven:

11. At the hearing Plaintiff testified that her primary objection to enforcement of the settlement in August 2008 was the waiver of any employment claims she may have under the Agreement and General Release. She specifically remembered reading language in the settlement agreement stating, "I wasn't compromising any rights other than the workers' comp."

The Commission also included a finding in the section of the opinion and award entitled "Conclusions of Law:"

2. . . . Plaintiff would not have signed the signature page for the [C]lincher [Agreement] if she had known that as part of the same settlement she was also signing a general release of rights.

The last sentence in finding eleven, finding twelve, and finding thirteen are in reality conclusions of law:

[11.] . . . It appears from the evidence that the rights released in the [general release agreement] were essential terms of both settlement agreements even though the [C]lincher [Agreement] expressly states that, "all parties agree that no rights, other than those arising under the provisions of the

Workers' Compensation Act, are compromised or released by the execution of this agreement."³

12. Defendants correctly contend that the Industrial Commission does not have jurisdiction over the [general release agreement]. However, the Full Commission does have jurisdiction over the issue of whether Plaintiff, in signing her [C]lincher [Agreement], mistakenly signed another agreement which would have caused her to not enter into the [C]lincher [Agreement] had she known.

13. Having considered the interests of all parties, the Full Commission finds, based upon the greater weight of the evidence, that the [C]lincher [Agreement] is not fair and just to all parties and should therefore not be approved.

The Commission made the following additional relevant conclusions of law:

1. Under § 97-17(b)(1) of the North Carolina General Statutes, the North Carolina Industrial Commission "shall not approve a settlement agreement . . . unless . . . [it] is deemed by the Commission to be fair and just, and that the interests of all of the parties . . . have been considered." N.C. Gen. Stat. § 97-17(b)(1) (2008). The "fairness and justness of the agreement should be determined at the time the agreement would have been filed with the Commission. . . ." *Lewis v. Craven Regional Medical Center*, 134 N.C. App. 438, 441, 518 S.E.2d 1, 3 (1999). Further, an agreement for compensation which is signed by the parties but is not approved by the North Carolina Industrial Commission is not binding. *Baldwin v. Piedmont Woodyards, Inc.*, 58 N.C. App. 602, 293 S.E.2d 814 (1982).

³ The language in finding eleven that "the [C]lincher [Agreement] expressly states that, 'all parties agree that no rights, other than those arising under the provisions of the Workers' Compensation Act, are compromised or released by the execution of this agreement'" does constitute a finding of fact.

. . . .

3. Having considered the interests of all parties, the Full Commission has determined herein that the [C]lincher [Agreement] should not be approved, as it is not fair and just. N.C. Gen. Stat. § 97-17(b) (1).

Based upon the foregoing findings and conclusions, the Commission disapproved the Clincher Agreement.

The Commission disapproved the Clincher Agreement based upon the Commission's conclusion that the Clincher Agreement was not fair and just. However, this issue was not addressed by the deputy commissioner, and the Commission, by the language it used in its opinion and award, also limited the issue to whether the agreement was enforceable, and not whether the agreement should be approved pursuant to N.C.G.S. § 97-17.⁴ In addition, there are not sufficient findings of fact in the Commission's opinion and award to support a conclusion that the Clincher Agreement is not fair and just. We note that some of the information included in the findings of fact do not constitute determinations made by the Commission. Plaintiff's letter, included in finding seven, is merely a statement of Plaintiff's contentions. Those contentions,

⁴ We are aware that the Commission has the authority, and sometimes the duty, to consider all aspects of a workers' compensation claim. *Vieregge v. N.C. State University*, 105 N.C. App. 633, 414 S.E.2d 771 (1992); *Joyner v. Rocky Mount Mills*, 92 N.C. App. 478, 374 S.E.2d 610 (1988). By the language in its opinion and award, the Commission limited its consideration in this matter to the issue decided by the deputy commissioner. The Commission did not conduct its own hearing to take evidence relating to the issue left undecided by the deputy commissioner: whether the Clincher Agreement should be approved based upon the requirements of N.C.G.S. § 97-17.

unless specifically concluded to be fact by the Commission, have no weight in our analysis.

The relevant findings of fact made by the Commission state that Plaintiff did not understand exactly what she was signing when she signed the general release agreement, that Plaintiff believed that she was signing two copies of the Clincher Agreement, and that Plaintiff did not intend to release Defendants from any claims other than those in the workers' compensation matter. The Commission further found that Plaintiff would not have signed the Clincher Agreement "if she had known that as part of the same settlement she was also signing a general release of rights." These findings of fact may support an inference that Plaintiff entered into the Clincher Agreement based upon a unilateral mistake, but they do not shed light on the fairness or justness of the terms of the Clincher Agreement. There are no findings of fact that support the Commission's conclusion that the terms of the Clincher Agreement were neither fair nor just. The Commission suggests in its second "conclusion of law" that the Clincher Agreement might not be valid because there was no meeting of the minds:

2. A valid contract exists only where there has been a meeting of the minds as to all essential terms of the agreement. *Northington v. Michelotti*, 121 N.C. App. 180, 184, 464 S.E.2d 711, 714 (1995). Plaintiff would not have signed the signature page for the [C]lincher [Agreement] if she had known that as part of the same settlement she was also signing a general release of rights.

However, the Commission makes no conclusion that the Clincher Agreement was invalid for this reason. We do not consider whether Plaintiff's unilateral mistake would render the Clincher Agreement invalid as that issue is not before us. See *Chaisson*, 195 N.C. App. 463, 673 S.E.2d 149. There are also insufficient findings of fact to support the Commission's conclusion that

[i]t appears from the evidence that the rights released in the Agreement and General Release were essential terms of both settlement agreements even though the [C]lincher [Agreement] expressly states that, "all parties agree that no rights, other than those arising under the provisions of the Workers' Compensation Act, are compromised or released by the execution of this agreement."

There are no findings in the Commission's opinion and award supporting this conclusion.⁵ The only finding relevant to this conclusion is contradictory to it: "the [C]lincher [Agreement] expressly states that, 'all parties agree that no rights, other than those arising under the provisions of the Workers' Compensation Act, are compromised or released by the execution of this agreement.'" We further note the following language from the Clincher Agreement: "Plaintiff represents that Plaintiff has read this agreement and fully understands it, that no promise, inducement or agreement not herein expressed has been made to Plaintiff, that this agreement contains the entire agreement

⁵ We also note that the use of the word "appears" creates some ambiguity concerning whether the Commission actually concluded that the rights released in the general release agreement were essential terms of the Clincher Agreement.

between the parties hereto, and that its terms are contractual and not a mere recital."

Because we find there are insufficient findings of fact to support the Commission's conclusions and award, we reverse and remand to the Commission for further action. *Smythe*, 170 N.C. App. at 364, 612 S.E.2d at 348. The Commission may hear additional evidence if necessary, and make additional findings of fact and conclusions of law in reaching a determination of whether the Clincher Agreement is enforceable. If the Commission determines the Clincher Agreement is enforceable, the Commission may conduct a new hearing, or remand to a hearing officer to determine whether the Clincher Agreement should be approved pursuant to N.C.G.S. § 97-17.

Reversed and remanded.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).