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NO. COA11-235
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

CLAUDE BAILEY,
Plaintiff

v.

North Carolina Industrial
Commission
I.C. No. 704724

ROBERTS PROTECTION AND
INVESTIGATIONS, EMPLOYER; LEE
ROBERTS, INDIVIDUALLY; AND STATE
COMPENSATION INSURANCE FUND,
CARRIER,
Defendants

Appeal by Plaintiff from Opinion and Award entered 15
December 2010 by the North Carolina Industrial Commission.
Heard in the Court of Appeals 30 August 2011.

The Law Offices of Timothy D. Welborn, P.A., by Timothy D. Welborn, for Plaintiff-appellant.

Mullen Holland & Cooper, P.A., by H. Randolph Sumner, for Defendants-appellees Roberts Protection and Investigations and Lee Roberts.

Jones, Hewson & Woolard, by Lawrence J. Goldman, for Defendant-appellee State Compensation Insurance Fund.

HUNTER, JR., Robert N., Judge.

Claude Bailey worked for Roberts Protection and
Investigations ("RPI") ("Defendant-employer"), owned by Lee

Roberts ("Defendant"). Mr. Bailey filed a Form 18 with RPI on 17 July 2006 for an injury by accident he claims occurred during his employment on 18 October 2005. RPI filed a Form 61 on 11 August 2006 denying Mr. Bailey's claim, contending that at the time of the accident, Mr. Bailey was a farm laborer for an employer with less than ten full-time nonseasonal farm employees, and so his accident was outside the jurisdiction of the Industrial Commission (the "Commission"). On 7 March 2007, Mr. Bailey filed a Form 33 with the Commission requesting that his workers' compensation claim be assigned for hearing. RPI filed a Form 33R contesting Mr. Bailey's claim. Deputy Commissioner Adrian A. Phillips heard the claim with the hearing being completed in Charlotte, North Carolina on 11 February 2010. On 21 June 2010, Deputy Commissioner Phillips ruled in favor of Mr. Bailey, finding that he was an employee of RPI and that the State Compensation Insurance Fund ("SCIF") ("Defendant-carrier") provided coverage for an injury the Deputy Commissioner found compensable. RPI and SCIF each gave notice of appeal, and RPI and Mr. Roberts filed a Form 44 on 17 August 2010. The Commission heard the matter on 17 November 2010. By Opinion and Award filed 15 December 2010, the Commission denied

Mr. Bailey's claim. Mr. Bailey gave timely notice of appeal on 21 December 2010. After careful review, we affirm.

I. Factual Background

RPI was a private investigation firm owned by Mr. Roberts and his wife with its principal place of business in California. RPI has never had an office in North Carolina. In the 1990s, Mr. Bailey began working for RPI as an independent contractor to help remodel a house on a sixty-five acre farm, which Mr. Roberts owned in Bessemer City, North Carolina. In 1997, Mr. Bailey was placed on RPI's payroll and became a full-time employee of RPI but worked mainly on Mr. Robert's farm. His duties included remodeling barns and houses, clearing land, putting up fences, building bridges, tending to cattle, and selling and delivering cattle. The parties also stipulated that Mr. Bailey was employed as a farmer. He would also occasionally accompany Mr. Roberts on investigation assignments.

RPI assured Mr. Bailey that he was covered by a worker's compensation policy obtained by the company from SCIF, a provider in California, for its California employees. The parties stipulated that a policy issued by SCIF might provide coverage. Evidence was introduced indicating that Mr. Bailey was one of the employees specifically listed by RPI to be

covered by the SCIF policy. Though Mr. Bailey was a North Carolina employee, RPI had Mr. Bailey claim a California residential address and file tax returns there to try to gain coverage under the SCIF policy.

On 18 October 2005 while working on Mr. Robert's farm, Mr. Bailey sustained an injury to his head when he "backed [a] farm tractor into a tree causing a branch to strike him across the face." After the accident, Mr. Bailey saw several physicians who gave somewhat conflicting diagnoses as to the cause of his injury. Mr. Bailey claims he has been disabled and cannot perform his previous work or any other gainful employment due to the injury sustained on 18 October 2005.

II. Jurisdiction

An Opinion and Award of the North Carolina Industrial Commission is a final judgment entered upon review of a decision of an administrative agency and appeal lies to the Court of Appeals pursuant to N.C. Gen. Stat. § 97-86 (2009).

III. Analysis

Mr. Bailey contends that the Commission committed (1) reversible error in its findings of fact by not making detailed findings of fact regarding all material issues presented by the claim, including Defendant-employer's purchase of insurance and

application of principles of estoppel; (2) reversible error in its finding of fact and conclusion of law that Mr. Bailey was a farm laborer; (3) reversible error in its conclusion of law applying N.C. Gen. Stat. § 97-13(b) to the facts of this case; (4) reversible error in its finding of fact that RPI did not possess workers' compensation insurance at the time of the accident; (5) reversible error in its finding of fact that the Commission did not have jurisdiction over Mr. Bailey's claim; and (6) prejudicial error by failing to find and conclude that Mr. Bailey sustained a compensable injury arising out of and in the course of his employment with RPI. For the following reasons, we affirm.

a. Findings of Fact Sufficiently Detailed

On issue one, Mr. Bailey argues the Commission committed reversible error in its findings of fact by not making more detailed findings of fact regarding all material issues presented by the claim, including RPI's purchase of insurance and principles of estoppel.¹ We disagree. "[T]he commission is not required to make findings as to each fact presented by the evidence, [however] it is required to make specific findings with respect to crucial facts upon which the question of

¹ We discuss the Commission's decision not to address the estoppel issue in part d below.

plaintiff's right to compensation depends.'" *Graham v. Masonry Reinforcing Corp. of America*, 188 N.C. App. 755, 763, 656 S.E.2d 676, 682 (2008) (quoting *Smith v. Constr. Co.*, 27 N.C. App. 289, 290, 218 S.E.2d 717, 720 (1975)).

We believe the Commission made more than adequate findings of fact upon which Mr. Bailey's right to compensation depended. The Commission fully addressed Mr. Bailey's employment history with RPI and Mr. Roberts, as well as RPI's lack of employment of ten or more full-time nonseasonal farm laborers at the time of Mr. Bailey's accident. We agree with Mr. Bailey that whether RPI purchased an insurance policy is a crucial fact because the Act applies regardless of exceptions if RPI purchased a workers' compensation insurance policy.² However, we note the Commission addressed this crucial fact in its finding of fact five, stating

² See N.C. Gen. Stat. § 97-13(b) (2009) ("This Article shall not apply to . . . farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer . . . nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, *except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article* from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article . . .") (emphasis added).

that "Defendant-Employer did not possess workers' compensation insurance at the time of the accident," and this finding is supported by competent evidence as discussed in part b below. Therefore, we hold the Commission's findings of fact were sufficiently detailed and not lacking any crucial facts.

b. No Errors in Findings of Fact

On issues two through four, Mr. Bailey contends the Commission committed reversible error in various findings of fact, claiming those facts are not supported by the evidence. We disagree. This Court reviews an Opinion and Award from the Commission to determine: "(1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Johnson v. Covil Corp.*, ___ N.C. App. ___, ___, 711 S.E.2d 500, 502 (2011). Generally, "findings of fact by the Industrial Commission are conclusive on appeal if supported by any competent evidence." *Johnston v. Duke Univ. Med. Ctr.*, ___ N.C. App. ___, ___, 700 S.E.2d 426, 429 (2010) (internal citations and quotation marks omitted). "'The Commission's conclusions of law are reviewed *de novo.*'" *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004) (citation omitted). We believe there is plenty of competent evidence in the record to support the

findings of fact and conclusions of law that Mr. Bailey challenges.

On issue two, Mr. Bailey contends the Commission committed reversible error in its finding of fact that Mr. Bailey was a farm laborer. We disagree. "Whether an employee is a farm laborer depends, in a large degree, upon the nearness of his occupation to the planting, cultivation, and harvesting of crops." *Hinson v. Creech*, 286 N.C. 156, 158, 209 S.E.2d 471, 473 (1974). In determining whether an employee is a farm laborer, emphasis is placed on the nature of the employee's work rather than the nature of the employer's business. *Id.*

Here, Mr. Bailey testified before the Commission that he "remodeled the barns, cleared land, put up fencing, built bridges, looked after the cattle, showed cattle, sold cattle, [and] delivered cattle." Mr. Bailey cleared and maintained sixty-five acres of farmland and looked after approximately fifty head of cattle. Most importantly, both RPI and Mr. Bailey stipulated that Mr. Bailey was employed as a farmer. When a stipulation has been approved by the Commission, that stipulation "is binding [on appeal] absent a showing that there has been error due to fraud, misrepresentation, undue influence, or mistake." *Moore v. Concrete Supply Co.*, 149 N.C. App. 381,

383, 561 S.E.2d 315, 318 (internal citations and quotation marks omitted). Mr. Bailey has shown no such error nor filed a motion in the cause as is proper procedure. See *R.R. Co. v. Horton and R.R. Co. v. Oakley*, 3 N.C. App. 383, 389, 165 S.E.2d 6, 10 (1969) (Any motion "to set aside a stipulation must be seasonably made; delay in asking for relief may defeat the right thereto.") Therefore, the evidence clearly supports the finding of fact that Mr. Bailey is a farm laborer.

Also on issue two, Mr. Bailey contends the Commission committed reversible error in concluding that Mr. Bailey is a farm laborer. However, this conclusion flows logically from the finding of fact discussed above and is also supported by finding of fact three, which states that Mr. Bailey was a full-time farm manager for the farm. Therefore, we hold the Commission did not commit error in its conclusion of law that Mr. Bailey was a farm laborer.

On issue three, Mr. Bailey argues the Commission committed reversible error in its finding of fact that RPI did not employ more than ten full-time nonseasonal farm laborers at the time of Mr. Bailey's accident. There is no evidence in the record that either RPI or Mr. Roberts employed ten or more full-time nonseasonal farm laborers. The evidence suggests that Mr.

Bailey was the only farm laborer employed by either party, and thus the Commission did not err in its finding of fact that RPI did not employ more than ten full-time nonseasonal farm laborers.

On issue four, Mr. Bailey argues the Commission committed reversible error in its finding of fact that RPI did not possess workers' compensation insurance at the time of the accident. We disagree. Mr. Bailey argues there was evidence that RPI had acquired a policy and specifically listed Mr. Bailey as an employee covered by that policy. Mr. Bailey further contends that the Deputy Commissioner's conclusion that Mr. Bailey was covered and that the Commission had jurisdiction to hear his claim required the Commission to make specific, detailed findings of fact regarding this issue. We disagree. "Where there is competent evidence to support the Commission's findings, they are binding on appeal even in light of evidence to support contrary findings." *Starr v. Gaston Cty. Bd. of Educ.*, 191 N.C. App. 301, 304-05, 663 S.E.2d 322, 325 (2008). Here, there is evidence in the record that the SCIF policy limited coverage to California workplaces. The only coverage outside California was for RPI employees hired in California but temporarily outside of California while working on a specific

assignment. Mr. Bailey does not qualify under either of these exceptions applying coverage to non-California employees, and, thus, the Commission's finding of fact that RPI did not have coverage regarding Mr. Bailey's accident is supported by the evidence.

c. Commission Lacked Jurisdiction

On issue five, Mr. Bailey argues the Commission committed reversible error in its finding of fact that it did not have jurisdiction over Mr. Bailey's claim. We disagree. When an appellate court reviews jurisdictional findings by the Commission, the court is required "to make its own independent findings of such jurisdictional facts from its consideration of all the evidence in the record." *Perkins v. Arkansas Trucking Servs., Inc.*, 351 N.C. 634, 637, 528 S.E.2d 902, 904 (2000) (quoting *Lucas v. L'il Gen. Stores*, 289 N.C. 212, 218, 221 S.E.2d 257, 261 (1976)). The evidence tending to support the plaintiff's claim "is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Johnston*, __ N.C. App. at __, 700 S.E.2d at 429 (internal citation and quotation marks omitted).

Here, section 13(b) of the Act clearly excludes from the Commission's jurisdiction claims involving "farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer." N.C. Gen. Stat. § 97-13(b). As discussed above, the Commission's findings that Mr. Bailey was a farm laborer and that RPI employed fewer than 10 full-time nonseasonal farm laborers are supported by the evidence. Thus, the Commission properly held it lacked jurisdiction over Mr. Bailey's claim. Additionally, RPI properly argues that Section 13(b) also excludes from the Commission's jurisdiction claims of "any person, firm or private corporation that has regularly in service less than three employees in the same business within this State." N.C. Gen. Stat. § 97-13(b). The record is devoid of any evidence indicating RPI employed anyone else in North Carolina in the same business as Mr. Bailey. Therefore, even viewing the evidence in the light most favorable to Mr. Bailey, we hold that the Commission properly held it lacked jurisdiction over Mr. Bailey's claim.

d. No Error By Not Reaching Merits

On issue six, Mr. Bailey contends the Commission committed prejudicial error in not determining if Mr. Bailey's injury was compensable. We disagree. "[T]he Commission must first decide

whether it has jurisdiction prior to reaching the merits [of a claim]." *Branch v. Carolina Shoe*, 172 N.C. App. 511, 519, 616 S.E.2d 378, 384 (2005). Because the Commission properly concluded it did not have jurisdiction over Mr. Bailey's claim, findings or conclusions regarding the substantive merits of Mr. Bailey's claim are unnecessary. Lacking jurisdiction to make compensation determinations, it logically follows that the Commission also did not have jurisdiction over estoppel determinations.

IV. Conclusion

For the foregoing reasons, the Order and Award of the Industrial Commission is

Affirmed.

Judges MCGEE and ELMORE concur.

Report per rule 30(e).