NO. COA11-648
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

TERRY WELLS,
Employee/Plaintiff,

v.

COASTAL CARDIOLOGY ASSOCIATES,
Employer,

North Carolina
Industrial Commission
I.C. File No. 792928

SELECTIVE INSURANCE COMPANY,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 29 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 November 2011.

The Workers' Compensation Law Firm, by Ashley M. Edwards and Sherman Lee Criner, for plaintiff appellee.

Cranfill Sumner & Hartzog LLP, by Brian J. Kromke & Sara B. Warf, for defendant appellants.

McCULLOUGH, Judge.

Defendants appeal an opinion and award entered by the North Carolina Industrial Commission awarding plaintiff all medical

compensation related to her compensable injury, to be paid by defendants. We affirm.

I. Background

Plaintiff Terry Wells ("plaintiff") began working for defendant-employer Coastal Cardiology Associates ("Coastal Cardiology") as a billing specialist in December 2005. Prior to plaintiff's employment at Coastal Cardiology, plaintiff was involved in a motor vehicle accident. Following the accident, plaintiff presented to Dr. George Huffmon ("Dr. Huffmon"), a neurosurgeon, complaining of intermittent neck pain, numbness and tingling in her arms, and burning in the back of her neck and shoulders. Dr. Huffmon found plaintiff to be myelopathic, *i.e.*, plaintiff suffered from significant compression on her spinal cord.

On 14 April 2004, Dr. Huffmon performed an interior cervical discectomy and fusion of certain vertebrae in plaintiff's neck. Specifically, Dr. Huffmon fused levels C3/4 and C4/5.[1] Also, plaintiff was born with a congenital fusion of

[1] "C" stands for "cervical," indicating the vertebrae located in the neck. The numbers following indicate which vertebrae are involved, counting from the top of the neck. For example, C3/4 indicates the area between the third and fourth vertebrae in plaintiff's neck.

level C2/3. Following her first surgery, plaintiff experienced increased pain in her neck, and Dr. Huffmon discovered plaintiff was suffering from significant squeezing on her spinal cord at levels C5/6 and C6/7, the vertebrae levels below those that were fused in her first surgery. Accordingly, on 15 November 2006, Dr. Huffmon performed a second surgery on plaintiff, ultimately resulting in four levels of her neck being decompressed and fused. After recovering from her second surgery, plaintiff returned to regular duty work for Coastal Cardiology in January 2007.

On 29 August 2007, at the end of the workday, plaintiff slipped and fell in the kitchen area at Coastal Cardiology's office, hitting her right knee on a cabinet and her back on the floor. On the following day, 30 August 2007, Coastal Cardiology submitted a Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission, stating that plaintiff had injured her back, neck, and right knee. That same day, plaintiff presented to Dr. Huffmon for evaluation of her injuries. Diagnostic imagining was performed to examine plaintiff's spine. Results of the imagining revealed degenerative disc disease at levels C7/T1,[2] the level below

[2] "T" stands for "thoracic," the section of vertebrae that begins

plaintiff's previous fusion, and bone growth. Dr. Huffmon opined that the bone growth had "been happening slowly since her previous surgery."

On 12 September 2007, plaintiff filed a Form 18 Notice of Accident to Employer, stating she had injured her right knee, neck and back. On 24 September 2007, Coastal Cardiology and its insurance carrier, Selective Insurance Company ("Selective Insurance," collectively, "defendants"), filed a Form 60 Employer's Admission of Employee's Right to Compensation, describing plaintiff's injury as an "injury to multi body parts." Plaintiff was thereafter paid temporary total disability benefits from the date of her injury. Defendants authorized Dr. Huffmon as plaintiff's treating physician, and Dr. Francis Pecoraro ("Dr. Pecoraro") to provide pain management treatment.

On 17 December 2009, plaintiff presented to Dr. Huffmon complaining of increased pain and distress in her neck and lower back. An MRI revealed spinal stenosis above, below, and behind the C4/5 fusion, and Dr. Huffmon ordered a cervical and lumbar myelogram test for plaintiff. On 16 February 2010, Dr. Huffmon performed a cervical myelogram test, which showed that plaintiff

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at the base of the neck.

had regrown an osteophyte, or bone spur, on the right side of levels C4/5 and C5/6 where her previous surgery had been performed. The myelogram also revealed that plaintiff was developing arthritis at level C7/T1, below where the previous surgery had been performed. As a result of the myelogram, Dr. Huffmon recommended surgery to decompress plaintiff's spinal cord at levels C4/5 and C5/6 and a fusion from level C3 to level T2.

Plaintiff sought a second opinion with Dr. George Alsina ("Dr. Alsina"), also a neurosurgeon. Dr. Alsina also recommended surgery to decompress plaintiff's spinal cord at level C4/5 and a fusion at level C7/T1. Defendants denied compensation to plaintiff for the recommended surgery, contesting whether plaintiff's current neck condition was causally related to her slip and fall at work. Because of defendants' denial of this medical treatment, plaintiff filed a Form 33 Request that Claim be Assigned for Hearing. A hearing was held on 20 May 2010 before Deputy Commissioner George R. Hall, III ("Deputy Commissioner Hall"). Plaintiff testified at the hearing, and the deposition testimony of Drs. Huffmon and Alsina was received into evidence.

Dr. Huffmon testified in his deposition that plaintiff's fall at work did not cause the degenerative disc disease nor the bone growth appearing on plaintiff's 30 August 2007 imaging results. Nonetheless, Dr. Huffmon testified that plaintiff's fall made her pre-existing conditions "symptomatic." Dr. Huffmon opined that plaintiff's fall at work "exacerbated" and aggravated her "current lumbar problems" as well as her "cervical condition." Dr. Huffmon testified that there was no way medically to determine what portion of plaintiff's current condition and her need for the recommended surgery is attributable to her fall at work.

Similarly, Dr. Alsina testified in his deposition that plaintiff's current conditions are "an outgrowth" of her degenerative disc disease and her bone growth, neither of which were caused by plaintiff's fall at work. However, Dr. Alsina opined that plaintiff's fall was "contributive" to her current condition in that it aggravated the pain associated with her pre-existing conditions. Dr. Alsina further testified that there was no definitive answer as to whether plaintiff's current need for surgery is related to her fall or to her pre-existing conditions.

Deputy Commissioner Hall filed his opinion and award on 14 September 2010, finding as fact that "[p]laintiff's cervical and lumbar problems were caused, aggravated, or accelerated by her fall at work on August 29, 2007." Accordingly, Deputy Commissioner Hall awarded plaintiff "all medical compensation reasonably related to Plaintiff's compensable injury by accident incurred or to be incurred that is reasonably designed to affect [sic] a cure, provide relief, or lessen Plaintiff's period of disability, including the treatment recommendations of Dr. Huffmon, Dr. Alsina, and Dr. Pecoraro[,]" to be paid by defendants. Defendants appealed Deputy Commissioner Hall's opinion and award to the Full Commission (the "Commission").

In an opinion and award filed 29 March 2011, the Commission affirmed the opinion and award of Deputy Commissioner Hall, with minor modifications. From the Commission's opinion and award, defendants timely appealed to this Court.

II. Standard of Review

"Appellate review of an award from the Industrial Commission is generally limited to two issues: (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." *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492

(2005). "The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965). "On appeal, this Court may not re-weigh the evidence or assess credibility." *Martin v. Martin Bros. Grading*, 158 N.C. App. 503, 506, 581 S.E.2d 85, 87 (2003). Accordingly, "[t]his 'court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (quoting *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274). "'The evidence tending to support 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.'" *Barbour v. Regis Corp.*, 167 N.C. App. 449, 454-55, 606 S.E.2d 119, 124 (2004) (quoting *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998)).

III. Discussion

On appeal, defendants challenge that four of the Commission's findings of fact are not supported by competent evidence. Defendants contend these unsupported findings of fact in turn do not support two of the Commission's conclusions of

law. In the alternative, defendants contend that the Commission's findings of fact are too vague to support the Commission's conclusions of law or to permit a meaningful review by this Court.

Specifically, defendants challenge the following findings of fact:

> 3. Plaintiff had previously undergone a cervical fusion by Dr. George Huffmon in November 2006, and had returned to work without any significant problems in January 2007.
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> . . . .
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> 7. Dr. Huffmon recommended surgery to Plaintiff's neck and back, including cervical fusion and/or a lumbar fusion. Follow-up care with Dr. Huffmon was denied by Defendants. Plaintiff sought a second opinion with Dr. George Alsina using her private healthcare insurance. Dr. Alsina opined Plaintiff will need cervical fusion, which may also clear up the lumbar problems. Plaintiff requested that Dr. Alsina be authorized as her treating physician.
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> . . . .
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> 11. Dr. Alsina opined that Plaintiff's fall did not cause her cervical problems, but was a contributing factor in that it aggravated her neck and low back pain.
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> 12. Dr. Huffmon testified to a reasonable degree of medical certainty, and the Full Commission finds as fact, that Plaintiff's cervical and lumbar problems were caused, aggravated, or accelerated by

her fall at work on August 29, 2007.

Defendants likewise challenge the following conclusions of law:

> 1. Plaintiff suffered an injury by accident while working for Defendant-Employer when she slipped and fell at work, aggravating her pre-existing cervical spine and lumbar spine problems.
>
> 2. Plaintiff is entitled to have Defendants pay for all medical compensation reasonably related to her compensable injury by accident incurred or to be incurred that is reasonably designed to affect a cure, provide relief, or lessen Plaintiff's period of disability, including the recommendations or Dr. Huffmon, Dr. Alsina, and Dr. Pecoraro.

(Citation omitted.)

Defendants' primary contention regarding the foregoing findings of fact and conclusions of law is that the Commission misstated Dr. Alsina's testimony and incorrectly summarized Dr. Huffmon's testimony, and that the entirety of the medical testimony is speculative and cannot support a legal determination that plaintiff's fall at work caused her current need for cervical and lumbar surgery.

"The burden rests upon the plaintiff to produce competent evidence establishing each element of compensability, including a causal relationship between the work-related accident and his

or her injury." *Castaneda v. International Leg Wear Grp.*, 194 N.C. App. 27, 31, 668 S.E.2d 909, 913 (2008), *aff'd*, 363 N.C. 369, 677 S.E.2d 454 (2009). Similarly, "[a] party seeking additional medical compensation pursuant to N.C. Gen. Stat. § 97-25 must establish that the treatment is 'directly related' to the compensable injury." *Perez v. American Airlines/AMR Corp.*, 174 N.C. App. 128, 135, 620 S.E.2d 288, 292 (2005). "The employer's filing of a Form 60 is an admission of compensability." *Id.* at 135, 620 S.E.2d at 293. "Where a plaintiff's injury has been proven to be compensable, there is a presumption that the additional medical treatment is directly related to the compensable injury." *Id.* at 135, 620 S.E.2d at 292. However, "[t]he employer may rebut the presumption with evidence that the medical treatment is not directly related to the compensable injury." *Id.*

Here, defendants stipulated to the fact that they accepted plaintiff's injuries "to multiple body parts" as "compensable via a Form 60 filed September 24, 2007." Thus, the presumption applies in the present case. Although defendants did not introduce any evidence, they appear to rely on their contention that the entirety of the medical testimony was too speculative to support a finding that the additional medical treatment is

directly related to plaintiff's compensable injury, thereby rebutting the presumption that the recommended surgery is compensable. We disagree.

It is well established that:

> When a pre-existing, ***nondisabling***, ***non-job-related*** condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment or by an occupational disease so that disability results, then the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent.

Morrison v. Burlington Industries, 304 N.C. 1, 18, 282 S.E.2d 458, 470 (1981). "In such a case, where an injury has aggravated an existing condition and thus proximately caused the incapacity, the relative contributions of the accident and the pre-existing condition will not be weighed." ***Wilder v. Barbour Boat Works***, 84 N.C. App. 188, 196, 352 S.E.2d 690, 694 (1987). The well-settled law is that "'an employer takes the employee as he finds her with all her pre-existing infirmities and weaknesses.'" ***Ard v. Owens-Illinois***, 182 N.C. App. 493, 498, 642 S.E.2d 257, 261 (2007) (quoting ***Morrison***, 304 N.C. at 18, 282 S.E.2d at 470). Thus, despite plaintiff's pre-existing conditions, it is possible for her to have sustained a

compensable injury where her pre-existing conditions were exacerbated by the accident at work.

"In cases involving 'complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury.'" *Holley v. ACTS, Inc.*, 357 N.C. 228, 232, 581 S.E.2d 750, 753 (2003) (quoting *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980)). "'However, when such expert opinion testimony is based merely upon speculation and conjecture, . . . it is not sufficiently reliable to qualify as competent evidence on issues of medical causation.'" *Id.* (omission in original) (quoting *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 915 (2000)). "'[T]he evidence must be such as to take the case out of the realm of conjecture and remote possibility, that is, there must be sufficient competent evidence tending to show a proximate causal relation.'" *Id.* (alteration in original) (quoting *Gilmore v. Hoke Cty. Bd. of Educ.*, 222 N.C. 358, 365, 23 S.E.2d 292, 296 (1942)). Nonetheless, "[t]he opinion of a physician is not rendered incompetent merely because it is based wholly or in part on statements made to him by the patient in the course of treatment or examination." *Adams v. Metals USA*,

168 N.C. App. 469, 476, 608 S.E.2d 357, 362, ***aff'd***, 360 N.C. 54, 619 S.E.2d 495 (2005).

Defendants rely on ***Holley*** in support of their contention that Dr. Huffmon's opinion testimony on causation was entirely speculative and cannot support the Commission's findings of fact on that issue. In ***Holley***, the plaintiff's physicians both testified that they could not say "to a reasonable degree of medical certainty" that the plaintiff's work accident was a significant contributing factor in causing the plaintiff's medical condition. ***Holley***, 357 N.C. at 233-34, 581 S.E.2d at 753-54. In ***Holley***, one of the plaintiff's doctors testified there was a "low possibility" that the plaintiff's work accident caused her condition, stating there were "'just a galaxy of possibilities.'" ***Id.*** at 233, 581 S.E.2d at 753. Another of the plaintiff's doctors testified, "I am unable to say with ***any degree of certainty*** whether or not the . . . work injury is related to the development of [the plaintiff's medical condition]" and "I don't really know what caused [the plaintiff's medical condition]." ***Id.*** at 233, 581 S.E.2d at 753-54.

Here, however, both Dr. Huffmon's and Dr. Alsina's causation testimony was based on more than a "mere possibility."

Id. at 234, 581 S.E.2d at 754. Rather, Dr. Huffmon provided the following testimony:

> Terry has had neck problems ever since I've known her. And her fall in August of 2007 caused an exacerbation of a pre-existing condition she's had for the eight years I've known her.
>
> And unfortunately, I can't apportion what is due to a fall at work, versus the natural history of her disease, versus other things she's had. . . .
>
> . . . But there is no doubt in my mind that the fall she had at work caused her previous condition to become symptomatic again.

In addition, Dr. Huffmon stated his "opinion to a reasonable degree of medical certainty" that plaintiff's "current lumbar problems" were "aggravated or accelerated by the fall she experienced at work. She had never complained of her low back prior." Dr. Huffmon also stated his opinion "to a reasonable degree of medical certainty" that plaintiff's fall at work "aggravated" her current cervical condition and that plaintiff's neck pain "was certainly accelerated or exacerbated by the fall." Similarly, Dr. Alsina stated his "opinion to a reasonable degree of medical certainty" that plaintiff's fall at work "aggravated her pain" and was a "contributive" factor to her current condition. This testimony is competent expert

opinion testimony as to the issue of medical causation and supports the Commission's findings of fact numbers 11 and 12. Findings of fact numbers 3 and 7 are likewise supported by the testimony of plaintiff, Dr. Alsina, and Dr. Huffmon.

These findings of fact in turn support the Commission's conclusions of law that plaintiff's compensable injury at work aggravated her pre-existing cervical spine and lumbar spine problems, entitling her to have defendants pay for reasonably related medical treatment, including the recommended surgery at issue. The opinion and award of the Commission, in light of the record and the testimony, adequately specifies defendants' workers' compensation obligations with respect to plaintiff's cervical and lumbar conditions. The opinion and award of the Commission is therefore affirmed.

Affirmed.

Judges HUNTER, JR., and THIGPEN concur.

Report per Rule 30(e).