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NO. COA01-1222

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

ROBIN CURRENCE,
Employee,
Plaintiff

v.

From the North Carolina
Industrial Commission
I.C. No. 648616

SARA LEE INTIMATES/BALI,
Employer,
SELF INSURED

(CONSTITUTION STATE SERVICE
COMPANY, Administrator),
Defendants

Appeal by defendants from an opinion and award entered 11 June 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 May 2002.

Frederick R. Stann for plaintiff-appellee.

Orbock Bowden Ruark & Dillard, PC, by Roger L. Dillard, Jr. for defendant-appellants.

HUNTER, Judge.

Sara Lee Intimates/Bali ("Sara Lee"), a self-insured employer, and its administrator, Constitution State Service Company (together "defendants"), appeal an award of the North Carolina Industrial Commission ("the Commission") awarding temporary total and temporary partial disability compensation to Robin Currence ("plaintiff") for bilateral carpal tunnel syndrome. Defendants

challenge the Commission's determination that plaintiff's condition is a compensable occupational disease under N.C. Gen. Stat. § 97-53(13) (1999). We affirm.

The Commission's findings of fact, as supported by competent evidence of record, may be summarized as follows: Plaintiff started working for Sara Lee in October of 1994 as a "picking associate," selecting lingerie garments from bins and packing them for shipment. In May of 1996, plaintiff saw Sara Lee's company physician, Dr. Costner, for numbness, swelling, and pain in her hands. Dr. Costner diagnosed tendonitis of the wrists and treated plaintiff with ibuprofen and splints. When plaintiff's condition did not improve, Dr. Costner ordered tests and placed plaintiff in therapy. Plaintiff's condition worsened, and she sought a second opinion from her family doctor, who referred her to Dr. Raymond C. Sweet, a neurosurgeon. Dr. Sweet examined plaintiff in September of 1996. Dr. Sweet "noted positive bilateral Phalen's and Tinel's signs." Dr. Sweet diagnosed plaintiff with bilateral carpal tunnel syndrome. He performed surgery on plaintiff's left wrist in September of 1996, which alleviated her symptoms, and operated on her right wrist in March of 1997.

Sara Lee fired plaintiff on 5 April 1997, citing errors in her work. In more than two years of employment prior to filing her workers' compensation report in October of 1996, plaintiff had received no reprimands or warnings. Beginning in January of 1997, she received a written warning each month and was terminated after the third warning.

Based on Dr. Sweet's opinion, the Commission found that "[p]laintiff's bilateral carpal tunnel syndrome was caused by her employment duties with defendant-employer," and that her employment "placed her at an increased risk of developing carpal tunnel syndrome as compared to members of the general public not so employed." The Commission concluded that plaintiff's condition is the result of "conditions characteristic of and peculiar to her employment with defendant-employer, is not an ordinary disease of life to which the general public not so employed is equally exposed, and is, therefore, a compensable occupational disease [under] N.C. Gen. Stat. § 97-53(13)."

On appeal, defendants argue that the Commission erred in finding that plaintiff "develop[ed] bilateral carpal tunnel syndrome or any other occupational disease as a result of her employment with the defendant-employer." Defendants rely upon the deposition testimony of expert witness Dr. Gregory K. Hardigree, an orthopedic surgeon, who opined that plaintiff did not have carpal tunnel syndrome, and that her job duties did not create an increased risk of developing carpal tunnel syndrome. Defendants assert that "Dr. Hardigree's opinion as to plaintiff's condition is more credible than Dr. Sweet's opinion, regardless of the fact that Dr. Sweet acted as plaintiff's treating physician."

Our review of a workers' compensation award is limited to determining "(1) whether there is any competent evidence in the record to support the Commission's findings of fact; and (2) whether those findings of fact support the Commission's conclusions

of law." *Locklear v. Stedman Corp.*, 131 N.C. App. 389, 393, 508 S.E.2d 795, 797 (1998). "Thus, if there is competent evidence to support the findings, those findings are conclusive on appeal even though there is plenary evidence to support contrary findings." *Id.*

Under N.C. Gen. Stat. § 97-53(13), an employee seeking workers' compensation benefits for an occupational disease must show the following:

- (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.

Hardin v. Motor Panels, Inc., 136 N.C. App. 351, 354, 524 S.E.2d 368, 371 (2000). "The first two elements are satisfied if the occupation exposed plaintiff to a greater risk of contracting the disease than the general public." *Locklear*, 131 N.C. App. at 393, 508 S.E.2d at 798. "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.'" *Hardin*, 136 N.C. App. at 354, 524 S.E.2d at 371 (citation omitted).

Under the standards set forth above, we find no merit to defendants' appeal. Consistent with the expert opinion of plaintiff's treating physician, Dr. Sweet, the Commission found that "[p]laintiff's employment with defendant-employer placed her at an increased risk of developing carpal tunnel syndrome as

compared to members of the general public not so employed," and that her "bilateral carpal tunnel syndrome was caused by her employment duties with defendant-employer." These findings are supported by competent evidence of record and support the Commission's conclusion of law that plaintiff's carpal tunnel syndrome is a compensable occupational disease under N.C. Gen. Stat. § 97-53(13).

Defendants ground their appeal in the expert testimony given by Dr. Hardigree, who examined plaintiff on 14 September 1998 and reviewed her medical records. Relying in part upon his familiarity with defendant-employer's workplace, Dr. Hardigree testified at deposition that plaintiff's employment placed her at no additional risk of developing carpal tunnel syndrome. Defendants make much of the fact that Dr. Hardigree supported his position with an employer-prepared videotape purporting to reflect the job duties of plaintiff's position, while Dr. Sweet relied upon plaintiff's own description of her job. However, the Commission explicitly found as fact that "[t]he video submitted by defendants . . . does not reflect the nature of the job duties completed by plaintiff in that the pace of work depicted is substantially slower than what was expected of plaintiff." The Commission further found that:

Plaintiff's job as a "picking associate" was a production job requiring her to push a cart down long aisles of inventory and select women's lingerie garments from bins. . . . Plaintiff would hold up to 30 items in one hand while picking with the other. Plaintiff alternated hands as fatigue dictated. Plaintiff was also required to fold each item for shipping. Plaintiff would generally complete between 15 and 20 order tickets per

hour. Each ticket normally had 100 to 150 items listed. Plaintiff worked five or six days per week, eight hours per day. Each day plaintiff had two fifteen-minute breaks and one thirty-minute lunch break. Plaintiff was expected to work as fast as possible to complete as many orders as she could during her shifts.

We hold that the Commission's findings are supported by the evidence of record and are thus are binding on appeal.

Moreover, the Commission explicitly found: "The increased risk opinion given in this case by Dr. Sweet is given greater weight than that of Dr. Hardigre[e]. Dr. Sweet is an independent neurologist who treated plaintiff. Dr. Hardigre[e] is an orthopedist retained by defendant-employer who did not treat plaintiff." "[T]he Commission is the sole judge of the credibility of the witnesses as well as how much weight their testimony should be given." *Bailey v. Sears Roebuck & Co.*, 131 N.C. App. 649, 653, 508 S.E.2d 831, 834 (1998).

Defendants also point to Dr. Hardigree's opinion that plaintiff did not have carpal tunnel syndrome. Dr. Hardigree observed that plaintiff complained of discomfort in her whole hand, while carpal tunnel syndrome affects only the thumb, index, and long fingers. However, Dr. Hardigree was unable to render any alternative diagnosis, and was unable to explain why the carpal tunnel releases performed by Dr. Sweet relieved plaintiff's condition. By contrast, Dr. Sweet explained that, based on his twenty years of experience as a neurosurgeon, carpal tunnel patients commonly presented with numbness or tingling in the entire hand. He found plaintiff's symptoms entirely consistent with this

diagnosis and with patient histories he encountered in his practice. As discussed above, the Commission's decision to credit Dr. Sweet's opinion over Dr. Hardigree's opinion is binding. Defendants' position is without merit.

Because the Commission's findings of fact are based upon competent evidence and support its conclusions of law, we affirm the opinion and award.

Affirmed.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).