An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-1435

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2004

JENNIFER RAVEN,
Plaintiff,

v. Industrial Commission
No. I.C. 117229

ILLINOIS TOOLWORKS AND
KEMPER INSURANCE COMPANY,
Defendant.

Appeal by plaintiff from opinion and award filed 23 July 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 23 August 2004.

Bollinger & Piemonte, PC, by George C. Piemonte, for plaintiff-appellant.

Cranfill, Sumner & Hartzog, L.L.P., by Nicole Dolph Viele, for defendants-appellees.

TIMMONS-GOODSON, Judge.

Plaintiff appeals from an opinion and award of the Industrial Commission denying her claim for workers compensation on the ground that she failed to prove by the greater weight of the evidence that she sustained an injury by accident or specific traumatic incident.

The Commission made the following pertinent findings of fact:

> 2. On November 30, 2000, plaintiff alleges that while she was lifting a box of copy paper, she felt a twinge in the back of her neck on the right side. Plaintiff claims that she reported that she was having neck trouble to her supervisor Roseanne Gray on December 1,

2000. However, Mrs. Gray was not at work on December 1, 2000. Plaintiff completed her shift that day and worked a full shift the following day without reporting that she was experiencing any pain.

3. Plaintiff went to the emergency room on December 2, 2000 for treatment of her pain. She returned to seek treatment on December 3, 2000 and on December 4, 2000. Plaintiff indicated that the onset of pain was gradual. The emergency room report lists "no known trauma" as the cause of injury. Plaintiff denied that she had any knowledge of how the injury occurred according to the triage report.

4. Plaintiff was seen by Dr. Henegar on December 5, 2000. There was no indication in Dr. Henegar's notes of a specific traumatic incident. Further, according to Dr. Henegar's notes, plaintiff attributed her pain to having "slept wrong."

5. Plaintiff began treating with Dr. Cowan, neurosurgeon, on December 12, 2000. Dr. Cowan indicated that plaintiff's injuries were consistent with sleeping in the wrong position on one's back. He further testified that it would be unusual for a patient to visit the emergency room three times as well as a specialist without describing how the injury occurred. Dr. Cowan had no record of how the injury occurred in his notes.

6. Plaintiff was in constant contact with defendant-employer and did not indicate whether she had sustained an injury by accident while in the course and scope of her employment even though she was asked a number of times if she had hurt herself at work. Plaintiff did not claim to have been injured on the job until she filed her Form 18 on or about February 28, 2001.

7. Plaintiff did not give notice of her claim of an injury by accident until she had notice that she would need surgery to correct her condition. Prior to this time plaintiff had indicated that her condition was not work related.

Based upon these findings, the Commission concluded that plaintiff failed to prove by the greater weight of the evidence that she suffered an injury by accident or specific traumatic incident while in the course and scope of employment. Commissioner Bolch dissented, concluding that plaintiff never stated that the injury did not occur at work and that her failure to correlate her pain with the work-related incident was likely due to her inability to identify the source of the pain.

Plaintiff contends the Commission erred by ruling she failed to prove by the greater weight of the evidence that she sustained an injury by accident or specific traumatic event while engaged in her employment. We disagree.

Appellate review of a worker's compensation decision is "limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). The reviewing court "'does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (*quoting Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). The appellate court, in accordance with the Supreme Court's mandate of liberal construction in favor of awarding benefits, is to consider

the evidence "in the light most favorable to plaintiff." *Id.* Conflicts in the evidence are for resolution by the Industrial Commission as the "sole judge of the weight and credibility of the evidence." *Deese*, 352 N.C. at 116, 530 S.E.2d at 553. The Commission is not required to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible. *In Deese,* our Supreme Court concluded:

> Requiring the Commission to explain its credibility determination and allowing the Court of Appeals to review the Commission's explanation of those credibility determinations would be inconsistent with our legal system's tradition of not requiring the fact finder to explain why he or she believes one witness or another or believes one piece of evidence is more credible than another.

352 N.C. at 116-17, 530 S.E.2d at 553.

We hold the Commission's findings are supported by evidence in the record. The evidence is uncontradicted that plaintiff did not report the injury on the date it allegedly occurred. Although plaintiff stated she reported the injury to her supervisor, Roseanne Gray, on 1 December 2000, Ms. Gray testified that she was not in the office on that date and that plaintiff never reported an on-the-job injury to her until the filing of plaintiff's Form 18. Plaintiff also testified that she experienced pain in her neck on 30 November 2000 when she reached for a Christmas wreath while decorating at her father's house. When plaintiff sought treatment for her neck condition, she never mentioned an on-the-job injury. In fact, the medical records immediately following the incident demonstrate that plaintiff denied sustaining an injury. Plaintiff

testified that she related to Dr. Martin Henegar on 5 December 2000 that she did not remember what she did to hurt her neck. She speculated that she could have hurt it while picking up Christmas decorations or that she could have "slept wrong." Dr. Michael Andrew Cowan, the surgeon who performed the surgery on plaintiff's neck, testified that it was "conceivable and possible" that the work incident caused her condition but he did not "have any records of any injury in any of [his] notes or any of her history." He also testified that he could not say whether the event of picking up the box, rather than sleeping wrong, would have been the more likely cause of the injury. None of the histories in the hospital records suggested to Dr. Cowan that plaintiff hurt her neck on the job. The opinion and award is affirmed.

Affirmed.

Judges CALABRIA and LEVINSON concur.

Report per Rule 30(e).