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NO. COA07-1220

NORTH CAROLINA COURT OF APPEALS

Filed: 3 June 2008

LINDA TAYLOR
Employee,
Plaintiff,

v.

N.C. Industrial Commission
File Nos. 379751, 952127,
379748

TAYLOR GRAPHICS/CREATIVE
GRAPHICS,
Employer,

and

THE ZENITH INSURANCE COMPANY
and COMP CAROLINA INSURANCE
COMPANY,
Carriers,
Defendants.

Court of Appeals

Slip Opinion

Appeal by Plaintiff from Opinion and Award entered 25 May 2007
by the North Carolina Industrial Commission. Heard in the Court of
Appeals 14 April 2008.

Rose Rand, P.A., by Paul N. Blake, III, for Plaintiff-Appellant.

Allen, Kopet & Associates, PLLC, by Stephen F. Dimmick and Scott J. Lasso, for Defendant-Appellees Creative Graphics and CompCarolina.

Teague, Campbell, Dennis & Gorham, L.L.P., by Dayle A. Flammia, for Defendant-Appellee The Zenith Insurance Company.

ARROWOOD, Judge.

Linda Taylor (Plaintiff) appeals from an Opinion and Award of the North Carolina Industrial Commission reversing an Award by a Deputy Commissioner and denying Plaintiff's claims for workers' compensation benefits. We affirm.

The pertinent facts are largely undisputed and may be summarized as follows: In January 1998, Plaintiff was an employee and co-owner of Taylor Graphics, a company engaged in screen printing and sign printing. The business was jointly owned by Plaintiff and her former husband. In 1999 Plaintiff bought her ex-husband's share of the business and changed the business name to Creative Graphics. The present appeal involves three separate workers' compensation claims filed by Plaintiff.

On 28 January 1998 Plaintiff suffered a compensable workplace injury to her back; I.C. File No. 379751 arises from this incident. Plaintiff aggravated her January 1998 back injury on 16 April 1999, when she slipped and fell off a ladder at work; I.C. File No. 952127 seeks workers' compensation benefits for injuries arising from this incident. The third workers' compensation claim, I.C. File No. 379748, alleges that in December 2002 Plaintiff suffered another compensable injury. On 27 February 1998 Plaintiff filed an Industrial Commission Form 19, the employer's report of an employee's injury, for the January 1998 injury. Plaintiff was out of work for approximately ten days due to the 28 January 1998 incident. On 22 April 1999 Plaintiff filed a Form 19 for the April 1999 injury with the Industrial Commission. Plaintiff missed seven days of work as a result of the 16 April 1999 accident.

Plaintiff was treated for her injuries by Dr. Mark Hooper, a chiropractor. Dr. Hooper treated plaintiff for her January 1998 injury from February 1998 until 6 May 1998, and for her 16 April 1999 injury from 21 April 1999 until 13 July 1999. Between 23 August 2000 until 18 January 2001, Dr. Hooper treated Plaintiff for another re-aggravation of her injury. Defendant Zenith Insurance Company (Zenith) paid for plaintiff's medical treatment from 3 February 1998 until 23 February 2001.

On 24 December 2002 Plaintiff again sought treatment from Dr. Hooper for back pain. Plaintiff later filed workers' compensation claim No. 379748 alleging that she suffered a compensable injury in December 2002; she also alleges a back injury in January 2003, caused by having to brake suddenly while driving. However, Plaintiff did not report these new injuries to Dr. Hooper. Defendant Comp Carolina Insurance Company, the insurance carrier when Plaintiff was treated by Dr. Hooper in December 2002 and thereafter, has not paid medical benefits for this treatment.

On 4 November 2003 Plaintiff filed a Form 18, Notice of Accident to Employer and Claim of Employee, with the Industrial Commission for each of her three claims, Nos. 379751, 952127, and 379748. Plaintiff sought medical benefits and permanent partial disability. Defendants denied Plaintiff's claims, and in March 2005 a hearing was conducted before Deputy Commissioner Phillip A. Baddour, III. In an Opinion and Award filed 27 September 2006, Commissioner Baddour awarded Plaintiff medical benefits and temporary total disability. Defendants appealed to the Full

Commission, and on 25 May 2007 the Commission issued an Opinion and Award reversing Commissioner Baddour and denying Plaintiff's workers' compensation claim. Plaintiff has appealed this Opinion and Award.

Standard of Review

In reviewing a decision of the Industrial Commission:

[A]ppellate courts must examine "whether any competent evidence supports the Commission's findings of fact and whether [its] findings . . . support the Commission's conclusions of law." The Commission's findings of fact are conclusive on appeal when supported by such competent evidence, "even though there [is] evidence that would support findings to the contrary."

McRae v. Toastmaster, Inc., 358 N.C. 488, 496, 597 S.E.2d 695, 700 (2004) (quoting *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000); and *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965)).

"Determinations of the weight and credibility of evidence are for the Commission; this Court simply determines whether the record contains any evidence tending to support the finding." *Hensley v. Indus. Maint. Overflow*, 166 N.C. App. 413, 418, 601 S.E.2d 893, 897 (2004) (citing *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)). "This Court reviews the Commission's conclusions of law de novo." *Britt v. Gator Wood, Inc.*, __ N.C. App. __, __, 648 S.E.2d 917, 920 (2007).

Plaintiff first argues that the evidence was insufficient to support the Commission's finding of fact number nine (9). We disagree. Finding of fact nine states that:

9. On December 24, 2002, plaintiff saw Dr. Hooper for her back condition and she continued to treat with him until April 2, 2003. At his deposition, Dr. Hooper initially testified that plaintiff's December 24, 2002 visit was due to a re-aggravation of her April 16, 1999 injury and was not a new injury. However, plaintiff did not inform Dr. Hooper about a new injury moving office equipment in December 2002 or that she was pursuing an additional worker's compensation claim. Based on plaintiff's testimony that she re-injured herself in December 2002, Dr. Hooper could not say with any medical certainty that the treatment he provided plaintiff after December 24, 2002 was related to her April 16, 1999 injury. Thus, the Commission finds that plaintiff's December 2002 injury was not related to plaintiff's April 16, 1999 injury.

Plaintiff presents appellate arguments about the proper deadline for seeking medical treatment for a compensable injury. However, this issue that is not addressed in Finding of Fact No. 9. Further, Plaintiff does not dispute that: (1) Dr. Hooper treated her for back pain between December 2002 and April 2003; (2) Dr. Hooper initially testified this treatment was for a re-aggravation of her 16 April 1999 injury; (3) Plaintiff did not tell Dr. Hooper about her alleged workplace injury in December 2002, for which she was pursuing a workers' compensation claim; and (4) when it was called to his attention that Plaintiff had reported a December 2002 injury, Dr. Hooper testified that he could no longer say with a degree of medical certainty whether the treatment in December

2002 and thereafter was due to a new injury or a flare-up of her earlier workplace injury.

Thus, Plaintiff has not disputed the sufficiency of the evidence to support any of the key factual findings of Finding of fact nine, upon which the Commission based its finding that Plaintiff's alleged December 2002 injury was not causally related to her April 1999 injury. Further, our own review of the evidence reveals that each of these statements is supported by competent evidence.

Read generously, Plaintiff's argument might be construed as an assertion that there was evidence from which the Commission might have made different findings. Nonetheless, "the Commission's findings of fact 'are conclusive on appeal when supported by competent evidence, even though there be evidence that would support findings to the contrary.'" *Davis v. Harrah's Cherokee Casino*, 362 N.C. 133, 137, 655 S.E.2d 392, 394-95 (2008) (quoting *Jones*, 264 N.C. at 402, 141 S.E.2d at 633). This assignment of error is overruled.

Plaintiff also argues that the trial court erred by making conclusion of law number three (3). We disagree.

Plaintiff argues on appeal that she should be excused from compliance with N.C. Gen. Stat. § 97-22 (2007), which requires an injured employee to notify her employer of the injury as soon as possible and no later than 30 days after the accident. Plaintiff's appellate arguments are directed almost entirely to the issue of

whether she had a reasonable excuse for not complying with this statute. However, the Commission's conclusions do not address N.C. Gen. Stat. § 97-22. Conclusion of Law No. three states that:

3. The person claiming the benefit of compensation has the burden of showing that the injury complained of resulted from an injury by accident arising out of and in the course of employment. *Henry v. Leather Co.*, 231 N.C. 477, 57 S.E.2d 760 (1950). In the case at bar, plaintiff failed to carry the burden of proving by competent evidence that a causal relationship existed between the December 24, 2002 injury (IC. No. 379748) and the disability for which compensation is sought. *Click v. Freight Carriers*, 300 N.C. 164, 265 S.E.2d 389 (1980).

Plaintiff fails to present any real argument that this conclusion is not supported by findings of fact, and we conclude that it is supported by the Commission's findings of fact. This assignment of error is overruled.

For the reasons discussed above, we conclude that the Commission did not err and that its Opinion and Award should be Affirmed.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).