

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-761

NORTH CAROLINA COURT OF APPEALS

Filed: 5 May 2009

ROENELL LIDEA FIELDS,
Employee,
Plaintiff-Appellant,

v. Industrial Commission
No. 599446

PITT COUNTY MEMORIAL HOSPITAL,
Employer,

and

AEGIS ADMINISTRATIVE SERVICES,
Third Party Administrator,
Defendants-Appellees.

Court of Appeals

Slip Opinion

Appeal by Plaintiff from opinion and award entered 17 March 2008 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 January, 2009.

Edwards & Ricci, PA, by Roberta L. Edwards, for Plaintiff-Appellant.

Teague, Campbell, Dennis & Gorham, L.L.P., by Tamara R. Nance, for Defendants-Appellees.

McGEE, Judge.

Plaintiff was working for Defendant-Employer with permanent work restrictions related to a preexisting right knee condition when she sustained an injury by accident on 25 January 2006. The accident occurred when the chair Plaintiff was attempting to sit in slid out from under her and she fell to the floor. Plaintiff

initially reported pain in her lower back and right knee. Defendants admitted liability and began paying Plaintiff workers' compensation benefits. Plaintiff later claimed that her left knee became injured due to her altered gait following the injury by accident to her right knee. Defendants refused to compensate Plaintiff for the alleged work-related injury to her left knee, and began refusing further compensation for Plaintiff's alleged continuing back pain. Plaintiff requested a hearing on these issues, and a hearing was conducted on 26 March 2007 before Deputy Commissioner Theresa B. Stephenson. By opinion and award filed 22 August 2007, Deputy Commissioner Stephenson concluded that Plaintiff's left knee problems were the result of preexisting conditions, not the 25 January 2006 injury by accident, and that Plaintiff had failed to prove she required further treatment for her alleged back pain.

Plaintiff appealed the 22 August 2007 opinion and award to the Commission. In an opinion and award filed 17 May 2008, the Commission affirmed the 22 August 2007 opinion and award insofar as it relates to this appeal. It denied Plaintiff's claim for medical indemnity and compensation for her left knee problems, and Plaintiff's request for medical treatment for her back. Plaintiff appeals.

In Plaintiff's two arguments, she contends the Commission erred in finding that her "left knee condition" and her "current back condition" were unrelated to her compensable injury, and in denying Plaintiff's requests for compensation for these conditions.

We disagree.

"This Court's review is limited to a consideration of whether there was any competent evidence to support the Full Commission's findings of fact and whether these findings of fact support the Commission's conclusions of law." This Court has stated that "so long as there is some 'evidence of substance which directly or by reasonable inference tends to support the findings, this Court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary.'"

Ard v. Owens-Illinois, 182 N.C. App. 493, 496, 642 S.E.2d 257, 259-60; *disc. review denied*, 361 N.C. 690, 652 S.E.2d 254 (2007) (citations omitted). Plaintiff "assigned error to numerous findings of fact by the trial court, but has failed to argue any of these assignments of error in her brief on appeal. Such assignments of error are therefore abandoned, and the trial court's findings are binding on appeal. See N.C.R. App. P. 28(a)." *Willen v. Hewson*, 174 N.C. App. 714, 718, 622 S.E.2d 187, 190 (2005).

The Commission made the following relevant findings of fact in its 17 March 2008 opinion and award:

(1) Prior to 25 January 2006, Plaintiff had been working for some time under permanent work restrictions which were necessitated by her "preexisting bilateral knee condition of degenerative joint disease and severe osteoarthritis."

(2) Stipulated medical records going back to 14 August 1997 revealed that Plaintiff had been seeing Dr. Helen E. Harmon, a rheumatologist, for "complaints of bilateral knee pain." X-rays showed "evidence of progression in bilateral knees when compared

with previous films dated 12-29-95." Plaintiff was again seen by Dr. Harmon on 13 January 1998 for "'right knee pain secondary to flare of osteoarthritis' not associated with any reported trauma to the knee." Plaintiff again saw Dr. Harmon on 1 May 1998, complaining of "significant increased pain in the right knee with weight bearing." Plaintiff was told by Dr. Harmon on 6 January 1999 that Plaintiff would "eventually need a left total knee replacement" as a result of her "moderate to advanced osteoarthritis." Dr. Harmon mentioned, however, that Plaintiff's orthopedic surgeon, Dr. Tally E. Lassiter, Jr. might "be hesitant to perform a left total knee replacement given [Plaintiff's] significant problems with obesity."

(3) Dr. Lassiter performed a partial medial meniscectomy on Plaintiff's left knee on 3 June 1999, and opined on 31 May 2000 that Plaintiff's only remaining option was total left knee replacement, but he "would not recommend that because of Plaintiff's age and size." Dr. Lassiter recommended Plaintiff investigate gastric bypass surgery as a means of controlling her weight "'because the longevity of a total knee in someone like [Plaintiff] would not be very good.'"

(4) Plaintiff underwent a total left knee replacement in March of 2002 performed by Dr. David Allen Rockwell. Dr. Bradley K. Vaughn performed a total right knee replacement on Plaintiff on 16 December 2003.

(5) Following Plaintiff's right knee replacement, she continued to complain of pain in her left knee, but according to

medical records, did not attribute the pain to an altered gait resultant from the replacement of her right knee. Plaintiff was released to return to light duty work on 24 February 2004.

(6) At Plaintiff's one year post-operative visit on 13 December 2004, Dr. Vaughn's notes indicated that Plaintiff's left knee continued to bother Plaintiff, and she "'had a total knee arthroplasty done elsewhere, and she has documented loosening.'"

(7) Dr. Jeffrey Alloway, an orthopaedic specialist, saw Plaintiff on 12 January 2005. Plaintiff reported she was experiencing pain on a daily basis in her left knee. Dr. Alloway's notes stated Plaintiff had "'significant pain in the knees . . . usually worse with activity and better with rest.'" Dr. Alloway further opined that "'obesity is, by far, her most significant problem,'" and that "'she is probably going to have that left knee revised - she has a surgeon in Raleigh who will do this.'"

(8) Plaintiff sustained an injury to her right knee and lower back on 25 January 2006 while working for Defendant-Employer when a chair she was about to sit in moved, causing her to fall to the floor.

(9) Plaintiff was seen in Defendant-Employer's Occupational Health Department on 30 January 2006, reporting "only low back pain, which was diagnosed as a lumbar sprain. She also advised that she had an appointment already scheduled with her orthopaedic surgeon, Dr. Vaughn on February 2, 2006, for evaluation of her knee. When the 'Employee Event Report' was completed on January

30, 2006, the back and right knee were checked for 'Body Parts Injured.'"

(10) At her 2 February 2006 annual follow-up for her right knee replacement, Plaintiff told Dr. Vaughn about the accident at work the week before, and stated she "had been having 'exquisite pain' in her [right] knee. Dr. Vaughn ordered an x-ray, the results of which revealed 'aseptic loosening, right femoral component, caused by recent fall.'" As a result of this diagnosis, Defendants "accepted liability for the injury to the right knee and authorized the right total knee revision that Dr. Vaughn performed on March 3, 2006." Defendant-Employer provided light duty work for Plaintiff and started payments for temporary total disability benefits beginning from the date Plaintiff last worked prior to the surgery.

(11) Plaintiff informed Dr. Vaughn on a 10 April 2006 visit that her left knee was "more bothersome." Dr. Vaughn's notes from Plaintiff's visit indicated that "the right knee shows a previously documented aseptic loosening," but Dr. Vaughn's deposition testimony indicated that that was "a typographical error, that he was in fact referencing the previously documented left knee aseptic loosening." Dr. Vaughn's 10 April 2006 office note did not mention that the "increasing left knee complaints were due to altered gait or increased load bearing due to the right knee surgery." Dr. Vaughn's note from Plaintiff's 12 June 2006 visit "indicated twice that the surgery on the left knee would have been done had [P]laintiff not required the right knee surgery."

(12) Plaintiff did not report left knee pain when she was seen in Defendant-Employer's Occupational Health Department after the accident, and she did not mention any worsening left knee pain to Dr. Vaughn on her 2 February 2006 visit. "At no time during the course of her physical therapy at NovaCare following the right total knee revision did [P]laintiff report any problems with her left knee due to the January 25, 2006 injury, including no report of an altered gait or increased weight bearing."

(13) Plaintiff had not returned to work at the time of the 26 March 2007 hearing before Deputy Commissioner Stephenson, "even though it had been more than one year since the right total knee revision. Even though Dr. Vaughn had released [P]laintiff to light duty work within three months of her prior right total knee surgery, and to full duty work within 8 months[.]"

(14) Following Plaintiff's right knee revision, Defendant-Employer found a light duty, sedentary position for Plaintiff at her pre-accident wages, and would have permitted her the use of a scooter at work.

(15) After Plaintiff initially complained of back pain immediately after the injury, the record shows no further mention of back complaints until Plaintiff was seen by Dr. Leo E. Waivers on 2 March 2007. Dr. Janice T. Busher, Plaintiff's primary care physician, who practiced with Dr. Waivers, testified that Plaintiff "never really brought up her knee or back as an issue." Dr. Busher also testified that she did not "initiate or recommend physical therapy" for Plaintiff's back.

(16) At Plaintiff's 2 March 2007 appointment with Dr. Waivers, Plaintiff did not mention anything to him concerning injuring her back at work. Plaintiff was to see Dr. Busher within a week or two after her 2 March 2007 visit with Dr. Waivers, but did not do so. When Plaintiff did return to see Dr. Busher several times in April 2007, she "never once mentioned any complaints regarding her back."

(17) For many years Plaintiff had "long-standing, severe degenerative changes in the left knee" that required Plaintiff to have a "left total knee replacement." Plaintiff was at increased risk of the left total knee replacement failing because of Plaintiff's weight. Plaintiff's December 2004 x-rays indicated "aseptic loosening of the left knee component," which by January 2005 caused Plaintiff to have "daily pain in [her] left knee." Because of the failure of Plaintiff's left knee component, Plaintiff required a left total knee revision prior to 25 January 2006. The greater weight of the evidence revealed that a revision of Plaintiff's left knee would "have had to be done even without regard to the injury she sustained to her right knee on January 25, 2006."

The Commission's findings of fact tend to show that Plaintiff had well documented serious issues with her left knee before the 25 January 2006 accident. Plaintiff's left knee was replaced in 2003, and she continued to complain of pain in her left knee subsequent to that surgery and before her 25 January 2006 accident. The left knee replacement was done despite the multiple warnings of her physicians that her age and weight would probably seriously impair

the relief replacement surgery would have otherwise provided, and could lead to future failure of the left knee component. Following the left knee replacement, Plaintiff was diagnosed with "aseptic loosening of the left knee component," which by January 2005 caused Plaintiff to have "daily pain in [her] left knee." Plaintiff required revision of her left knee prior to the 25 January 2006 accident, but did not undergo this revision at that time due to problems with her right knee and her weight and age. Plaintiff did not complain of increased left knee pain immediately after the 25 January 2006 accident or during her physical therapy following the accident. Though Plaintiff complained to Dr. Vaughn of pain in her left knee following the 25 January 2006 accident, she did not associate her pain with the accident, and Dr. Vaughn indicated that the pain was the result of the previously documented aseptic loosening in her left knee. At many of her appointments with her physicians following the 25 January 2006 accident, Plaintiff made no mention of pain in her left knee.

Further, after her initial complaint of back pain following the 25 January 2006 accident, Plaintiff did not complain of back pain for over a year, and at that time she did not associate her back pain with the 25 January 2006 accident. The notes and testimony of Plaintiff's physicians concerning the vast majority of Plaintiff's visits following her injury by accident show no complaints of back pain following the 25 January 2006 accident.

We hold that the findings of fact made by the Commission are sufficient to support its conclusions of law that Plaintiff's left

knee and back conditions were unrelated to her compensable workplace accident of 25 January 2006. *Ard*, 182 N.C. App. at 496, 642 S.E.2d at 259-60. Plaintiff's arguments are without merit.

Affirmed.

Judges JACKSON and HUNTER, JR. concur.

Report per Rule 30(e).