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NO. COA11-233
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

CYNTHIA C. KRUTCH, Employee,
Plaintiff

v.

North Carolina Industrial
Commission
I.C. No. 495280

WAKE MEDICAL CENTER, Employer,
SELF-INSURED (KEY RISK MANAGEMENT
SERVICES, Servicing Agent),
Defendant.

Appeal by plaintiff and defendant from Opinion and Award entered 9 December 2010 by the Full North Carolina Industrial Commission. Heard in the Court of Appeals 1 September 2011.

Younce & Vtipil, P.A., by Robert C. Younce, Jr., for Plaintiff.

Cranfill Sumner & Hartzog LLP, by Robin H. Terry and Jaye E. Bingham, for Defendant.

THIGPEN, Judge.

Cynthia Krutch ("Plaintiff") and Wake Medical Center ("Defendant") appeal from an opinion and award entered 9 December 2010, which concluded that Plaintiff's left and right knee injuries were compensable and that Plaintiff's

psychological condition was compensable until Plaintiff returned to her pre-injury psychological baseline. Both Plaintiff and Defendant contend the evidence is insufficient to support certain challenged findings of fact. We conclude there is competent evidence to support the findings of fact challenged by Plaintiff and Defendant, and we affirm the opinion and award.

The evidence of record tends to show the following: Plaintiff has been a patient of Dr. Wilson Comer, a psychiatrist, since 1985 for depression. Plaintiff has also been on antidepressant medications since February 1985.

On 8 October 2004, Plaintiff suffered an admittedly compensable injury to her left knee while working for Defendant as a certified nurses' assistant. Defendant reported Plaintiff's injury to the Industrial Commission on 1 November 2004 and admitted Plaintiff's right to compensation for her left knee injury on 3 February 2005.

After the 8 October 2004 injury, Plaintiff's left knee became unstable. In January 2005, Plaintiff's left knee "gave out," and she fell on her right knee. On 28 January 2005, Plaintiff underwent arthroscopic surgery to her left knee. Four days after the surgery, Plaintiff's left knee became numb and again caused her to fall on her right knee. On multiple other

occasions - Plaintiff estimated between twelve and fifteen times - Plaintiff fell on her right knee in an effort to protect her left knee. Plaintiff has continued to have pain in her right knee, and the pain has grown worse over time.

On 7 June 2005, Plaintiff returned to Dr. Comer and reported being depressed and having an inability to focus, crying spells, insomnia, and an increased appetite, which resulted in a forty pound weight gain. Plaintiff attributed her symptoms to her left knee injury, pain in her knees, and stress from trying to work under the circumstances.

In June 2007, Dr. Comer recommended an inpatient stay at Holly Hill Hospital, and Plaintiff was admitted on 25 June 2007. At Holly Hill, Plaintiff was treated by Dr. Joseph Mazzaglia, a psychiatrist. During her inpatient stay, Plaintiff complained that her symptoms were worsened by her injury, pain, and mistreatment by her employer. Plaintiff was discharged from Holly Hill on 11 July 2007.

In August 2007, Plaintiff's employment with Defendant was terminated due to an inability to accommodate Plaintiff's work restrictions. Plaintiff lost her nursing assistant's license. Plaintiff was "devastated by these events."

On 27 November 2007, Plaintiff underwent left knee replacement surgery. After Plaintiff's surgery, on 6 June 2008, Plaintiff reported to Dr. Comer that she was doing well, and Dr. Comer noted that her mood was stable and her affect was much brighter than it had been in years. However, on 1 October 2008, Plaintiff reported depression, difficulty sleeping, and increased anxiety to Dr. Comer. On 22 October 2008, Plaintiff reported suicidal ideations and an inability to commit to her own safety. Plaintiff agreed to voluntarily return to Holly Hill Hospital, and she was readmitted for a brief inpatient stay on 23 October 2008.

On 8 September 2009, Plaintiff filed a Form 33, seeking treatment for her right knee and reimbursement for her psychiatric treatment. On 24 June 2010, the deputy commissioner entered an opinion and award concluding that Plaintiff's right knee condition was compensable; that Plaintiff's psychological condition is compensable until Plaintiff returns to her pre-injury baseline; and that Plaintiff was entitled to payment of medical expenses incurred or to be incurred as a result of her compensable left and right knee injuries and psychological condition.

On 9 December 2010 the Full Commission entered an opinion and award affirming the opinion and award of the Deputy Commissioner with modifications. The Full Commission concluded that Plaintiff's right knee condition was a direct and natural result of her admittedly compensable left knee injury, and thus compensable. The Full Commission also concluded that Plaintiff's psychological condition was a preexisting condition which was aggravated by her 8 October 2004 compensable injury at work, and thus compensable from the date of the injury, 8 October 2004, until 6 June 2008, at which time Plaintiff returned to her pre-injury psychological baseline.

Plaintiff and Defendant appeal from the 9 December 2010 opinion and award. Plaintiff contends the Full Commission erred by concluding the compensation for her psychological condition should be limited to the period between 8 October 2004 and 6 June 2008. Defendant contends the Full Commission erred by concluding Plaintiff's right knee injury was compensable and by concluding that Plaintiff's psychological condition was compensable.

Standard of Review

In reviewing a decision by the Industrial Commission, our Court's role "is limited to determining whether there is any

competent evidence to support the findings of fact, and whether the findings of fact justify the conclusions of law." *Cross v. Blue Cross/Blue Shield*, 104 N.C. App. 284, 285-86, 409 S.E.2d 103, 104 (1991) (citation omitted). "The Commission's findings of fact are conclusive upon appeal if supported by competent evidence, even if there is evidence to support a contrary finding." *Kelly v. Duke Univ.*, 190 N.C. App. 733, 738, 661 S.E.2d 745, 748 (2008), *disc. review denied*, 363 N.C. 128, 675 S.E.2d 367 (2009) (citation omitted). On appeal, this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight[;] [t]he 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), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999) (quotation omitted). "The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Id.* at 680, 509 S.E.2d at 413 (quotation omitted). "[F]indings of fact by the Commission may [only] be set aside on appeal when there is a complete lack of competent evidence to support them[.]" *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 914 (2000) (citation omitted).

I: Plaintiff's Appeal

In Plaintiff's sole argument on appeal, she contends the Full Commission erred by concluding her psychological condition was not compensable after 6 June 2008 because the finding of fact associated with this conclusion was not supported by competent evidence. We disagree.

Plaintiff specifically challenges the sufficiency of the evidence to support finding of fact number 20, which states the following:

20. Likewise, Dr. Mazzaglia testified that Plaintiff's psychological condition ". . . was pre-existing and was aggravated by the stress that that injury placed on her both physically and in terms of the impact on work." Based on the medical evidence of record, including the testimony of Drs. Smith and Mazzaglia, the Full Commission finds that Plaintiff's pre-existing psychological condition was aggravated by her October 8, 2004 compensable knee injury; however, the record indicates that Plaintiff had returned to her pre-injury psychological baseline as of June 6, 2008, when she reported to Dr. Comer that she was doing well, and he noted that her mood was good, stable, and better than it had been in years. Although it is clear from the record that Plaintiff did experience subsequent episodes of depression after June 6, 2008, the evidence of record is insufficient to establish those episodes were causally related to the October 8, 2004 injury as opposed to the various other stressors in Plaintiff's life.

Plaintiff contends the portion of the finding of fact pertaining to Plaintiff's return to her pre-injury psychological baseline on 6 June 2008 was not supported by competent evidence. The record, however, shows that on 6 June 2008, Dr. Comer's medical records stated that Plaintiff "is doing well"; "[h]er mood is good & has been stable"; "[o]verall things are going well"; Plaintiff was "[n]ot depressed" and had "no s.i. (suicidal ideation)"; Plaintiff could "enjoy herself"; and her "[a]ffect is much brighter than in years." This, we believe, is competent evidence to support the challenged portion of finding of fact number 20, that on 6 June 2008, Plaintiff returned to her pre-injury psychological baseline.

Plaintiff asserts on appeal that other evidence of record tends to show that Plaintiff's psychological condition was aggravated by her knee pain after 6 June 2008. However, our standard of review requires that "[t]he Commission's findings of fact are conclusive upon appeal if supported by competent evidence, even if there is evidence to support a contrary finding[,]" *Kelly*, 190 N.C. App. at 738, 661 S.E.2d at 748, and this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight[,]" *Adams*, 349 N.C. at 681, 509 S.E.2d at 414. Plaintiff's argument that other

evidence supports a different finding of fact regarding the aggravation of her psychological condition must necessarily fail.

Based on the foregoing, we conclude the Commission's finding that Plaintiff returned to her pre-injury psychological baseline on 6 June 2008 was supported by competent evidence.

II: Defendant's Appeal

i: Compensability of Right Knee Condition

In Defendant's first argument on appeal, it contends the Full Commission erred by concluding Plaintiff's right knee condition was compensable because the findings of fact associated with this conclusion were not supported by competent evidence. We disagree.

Defendant specifically challenges the sufficiency of the evidence to support findings of fact numbers 9 and 10, which state the following:

9. Dr. Smith testified that Plaintiff's right knee problems were a direct and natural result of her compensable left knee injury. Dr. Smith based his opinion upon the reports of Plaintiff, which the Full Commission finds to be credible, that her left knee gave way and she fell on her right knee on multiple occasions. Additionally, Dr. Smith felt that because Plaintiff's left knee was painful, she put more pressure on her right leg and used her right leg as a crutch.

10. Based upon the greater weight of the medical and other evidence of record, including the uncontroverted medical opinion of Dr. Smith, the Full Commission finds that Plaintiff's right knee condition is a direct and natural result of her compensable left knee injury.

The record contains evidence to support these findings, including the following deposition testimony of one of Plaintiff's treating physicians, Dr. Lyman Scott William Smith:

Q: And does it appear that her knee was giving way . . . during those early months after her left knee injury? . . .

A: My understating it was, yes.

Q: And did it at least on one occasion cause her to fall?

A: It sounds like on 1/13/05, according to Dr. Wood, yes.

Q: And Dr. Wood eventually did surgery on that knee; correct?

A: Correct.

Q: And you finally took over the case, it would be, I guess, December 2005?

A: . . . It was December 29th of 2005, yes.

. . .

Q: And Doctor, I'm just handing you a copy of the letter that you responded to us with. Was it your opinion that her right knee problems were a direct and natural result of her left knee problems?

A: I did.

Q: And what did you base that opinion on?

A: Upon that note that you indicated where she essentially was having pain in the left knee and twisted her right knee in the parking lot.

Q: Okay. . . . And do you still feel like that is the case?

A: I do. And part of this is that it's a natural course of events. If one knee is hurting a tremendous amount, we all try and put more pressure - or try to essentially use the opposite extremity as a crutch.

We believe the foregoing testimony is sufficient to support the Full Commission's finding of fact that Plaintiff's right knee condition was caused by the instability of her left knee.

Defendant also cites *Nale v. Allen*, 199 N.C. App. 511, 516, 682 S.E.2d 231, 235, *disc. review denied*, 363 N.C. 745, 688 S.E.2d 454 (2009), and argues that Dr. Smith's testimony was not "adequate" or "sufficiently reliable" to establish medical causation. Defendant contends Dr. Smith's testimony was "based merely upon speculation and conjecture." *Id.* at 516, 682 S.E.2d at 235. We disagree with this contention.

Dr. Smith's testimony was based upon statements made by Plaintiff for purposes of treatment. Medical opinions may be "based either on personal knowledge or observation or on

information supplied him by others, including the patient[.]” *Booker v. Medical Center*, 297 N.C. 458, 479, 256 S.E.2d 189, 202 (1979) (citations and quotations omitted). During Dr. Smith’s deposition, when asked whether Plaintiff’s right knee injury was “a direct and natural result of her left knee injury[.]” given the assumption of the reliability of Plaintiff’s statements that she fell on more than one occasion as a result of the instability of her left knee, Dr. Smith responded, “Given that assumption, yes.” “Statements made by a patient to his physician for the purposes of treatment and medical information obtained from a fellow-physician who has treated the same patient are ‘inherently reliable.’” *Id.* at 479, 256 S.E.2d at 202. For the foregoing reasons, we conclude that Dr. Smith’s testimony regarding the causation of Plaintiff’s right knee injury was not speculative.

ii: Compensability of Psychiatric Treatment

In Defendant’s second argument on appeal, it contends the Full Commission erred by concluding Plaintiff’s psychiatric treatment was compensable because the findings of fact associated with this conclusion were not supported by competent evidence. We disagree.

Defendant specifically challenges the sufficiency of the evidence to support findings of fact numbers 11 through 15, and numbers 19 through 21, which state the following:

11. Plaintiff has been seeing Dr. Wilson Comer, a psychiatrist, since 1985 for depression. She began treatment due to pain from a back injury that occurred during her former employment with Data General. Plaintiff has been on antidepressant medications since February 1985, however her depression was being effectively managed prior to her October 8, 2004 left knee injury. Plaintiff did not see Dr. Comer between 2003 and June 2005.

12. Plaintiff returned to Dr. Comer on June 7, 2005. It was noted that Plaintiff had been receiving antidepressants from her primary care physician. Plaintiff was tearful and reported being depressed, an inability to focus, crying spells, insomnia, and increased appetite, resulting in a 40 pound weight gain. At this appointment and follow-up appointments, Plaintiff attributed her symptoms to her work related knee injury due to pain in her knees and stress from trying to work under the circumstances.

13. Plaintiff was referred to an anger management class at work because of conflicts she began having with coworkers following her knee injury. Prior to this, Plaintiff had never had work-related anger management issues since beginning work at Defendant in 1995.

14. In June 2007, Plaintiff returned to Dr. Comer reporting increased psychiatric symptoms. He recommended an inpatient stay at Holly Hill Hospital, and Plaintiff was admitted on June 25, 2007. Dr. Joseph

Mazzaglia, a psychiatrist, was Plaintiff's treating physician at Holly Hill. Plaintiff was subsequently transferred to a day program and was thereafter discharged on July 11, 2007. During her inpatient stay at Holly Hill, Plaintiff complained that her symptoms were worsened by her injury, pain, and mistreatment by the employer. Following her discharge, Plaintiff continued regular treatment with Dr. Comer.

15. In August 2007, Plaintiff's employment with Wake Med was terminated due to an inability to accommodate Plaintiff's work restrictions. In addition, Plaintiff lost her nursing assistant's license. Plaintiff testified that Defendant should have allowed her to do clinical duties in small increments to enable her to keep her license. However, Defendant took the position that Plaintiff was never released to more than sedentary duty and that allowing her to work in a clinical capacity would have violated her work restrictions and risked further injury. Therefore, Defendant declined to sign Plaintiff's application for license renewal. Plaintiff reported being devastated by these events. Plaintiff's job and her nursing assistant's license were important to her both financially as well as emotionally.

. . .

19. With regard to the cause of Plaintiff's psychological condition since her left knee injury, Dr. Smith testified that Plaintiff's pain and disability have "absolutely" significantly contributed to her depression, and that this aggravation of her pre-existing psychological condition continued as of the time of his deposition. Dr. Smith further explained: ". . . my impression since she had that hospitalization in Holly

Hill is that the knee pain has been an issue for her that has been present and has affected her mood; and to some degree she hasn't completely recovered from what she feels is a physical injury, a physical damage, I would say, rather than - I think she feels that she's been damaged and it feels like she may never recover from it, and that has added to her depression."

20. Likewise, Dr. Mazzaglia testified that Plaintiff's psychological condition ". . ." was pre-existing and was aggravated by the stress that that injury placed on her both physically and in terms of the impact on work." Based on the medical evidence of record, including the testimony of Drs. Smith and Mazzaglia, the Full Commission finds that Plaintiff's pre-existing psychological condition was aggravated by her October 8, 2004 compensable knee injury; however, the record indicates that Plaintiff had returned to her pre-injury psychological baseline as of June 6, 2008, when she reported to Dr. Comer that she was doing well, and he noted that her mood was good, stable, and better than it had been in years. Although it is clear from the record that Plaintiff did experience subsequent episodes of depression after June 6, 2008, the evidence of record is insufficient to establish those episodes were causally related to the October 8, 2004 injury as opposed to the various other stressors in Plaintiff's life.

21. Based upon the greater weight of the evidence of record, including the uncontroverted medical opinions of Dr. Smith and Dr. Mazzaglia, the Full Commission finds that Plaintiff's admittedly compensable knee injury has significantly contributed to the ongoing aggravation of her pre-existing psychological condition. Plaintiff has

received treatment from Dr. Smith and Dr. Mazzaglia for this aggravated condition following her knee injury and returned to her pre-injury psychological baseline as of June 6, 2008.

Defendants specifically contend the foregoing findings of fact are not supported by competent evidence of record because Plaintiff's psychological condition is "long-standing" or "biological or genetic in nature." Defendants detail Plaintiff's psychological symptoms prior to her 8 October 2004 left knee injury. We find the evidence of Plaintiff's psychological symptoms prior to 8 October 2004 not dispositive. In accordance with our standard of review, the appropriate question for this Court is whether there is competent evidence of record to support the foregoing findings of fact, particularly, in this case, the portion of the findings relating to whether the 8 October 2004 injury aggravated Plaintiff's preexisting psychological condition. We conclude there is sufficient competent evidence.

The following competent evidence of record supports the Full Commission's findings pertaining to Plaintiff's aggravation of her psychological condition. Dr. Comer gave the following testimony during his deposition:

Q: What did her - did the primary stressor at that point appear, at least in her mind,

to be her knee injury and the difficulties that she was having at work as a result of the knee injury?

A: That seemed to be the focus of her concern. And yeah, when a person is depressed everything seems worse.

. . .

Q: . . . [W]ere her chronic pain and her disability and the problems that that may have been bringing about at work, were those the primary stressors for her at that point in her life?

A: I think I can say yes to that.

. . .

Q: . . . Were the problems with her knee at that point a significant contributing factor to her depression or her affective disorder? . . .

A: Sure.

. . .

Q: . . . [D]id you feel like that those problems with her knee, both the pain, the disability, and the conflicts at work, were they a significant contributing factor to her depression? . . . Or affective disorder?

A: I would say yes, that contributed to her depression; and her depression probably impaired her work, and her inability to do the work made the depression worse. It gets to be a vicious cycle.

. . .

Q: . . . Just to clarify that - I think I

understood what you just said, but just - you said that the knee pain and disability aggravated the depression?

A: Right.

Q: And then the depression made it hard for her to work?

A: Well, knee pain would aggravate depression. Depression would interfere with her ability to work as would the knee pain; and that would make her feel worse and more helpless, and at that point everything is making everything else worse. Depression is making her experience of the pain worse; pain is making her depression worse. Both of these interfere with her ability to work; inability to work makes her feel worse, and it's just one totally enmeshed -

Q: Do people who are depressed have a more difficult time dealing with chronic pain?

A: Absolutely. Depression makes everything worse. However bad it is, it makes it much worse.

. . .

Q: Okay. And do you still believe that her knee pain and disability significantly contributed to her depression?

A: Absolutely, yeah.

In addition to Dr. Comer's testimony, the testimonies of Dr. Mazzaglia and Dr. Smith also support the Full Commission's findings associated with the aggravation of Plaintiff's psychological condition. Dr. Mazzaglia stated during his

deposition that Plaintiff's psychological condition "was pre-existing and was aggravated by the stress that that injury placed on her both physically and in terms of the impact on work." Moreover, when asked whether Plaintiff's depression "seemed to be centered around her knee pain[,] " Dr. Smith responded, "I think that she has had a history of psychiatric issues and that this absolutely exacerbated that problem."

We believe the foregoing competent evidence supports the challenged findings associated with the aggravation of Plaintiff's psychological condition by her 8 October 2004 knee injury. Defendant's argument that other evidence exists from which different findings could have been made is without merit. Our standard of review requires that "[t]he Commission's findings of fact are conclusive upon appeal if supported by competent evidence, even if there is evidence to support a contrary finding[.]" *Kelly*, 190 N.C. App. at 738, 661 S.E.2d at 748, and this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight[.]" *Adams*, 349 N.C. at 681, 509 S.E.2d at 414.

In summary, we conclude that the findings of fact challenged by both Plaintiff and Defendant are supported by competent evidence of record. The findings, in turn, support

the Full Commission's conclusions of law associated with the compensability of Plaintiff's right knee condition and aggravation of Plaintiff's psychological condition. We affirm the 9 December 2010 opinion and award.

AFFIRMED.

Judges GEER and STROUD concur.

Report per Rule 30(e).