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NO. COA11-260
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

LENITA WILLIAMS,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. 138809

CITY OF WILMINGTON,
Employer,

KEY RISK MANAGEMENT SERVICES,
Third-Party Administrator,
Defendants.

Appeal by Plaintiff and Defendants from opinion and award entered by the North Carolina Industrial Commission on 1 November 2010. Heard in the Court of Appeals 13 September 2011.

Poisson, Poisson & Bower, PLLC, by E. Stewart Poisson, for Plaintiff-Appellee/Cross-Appellant.

Teague, Campbell, Dennis & Gorham, L.L.P., by Melissa R. Cleary, for Defendants-Appellants/Cross-Appellees.

McGEE, Judge.

Lenita Williams (Plaintiff) initiated this action before the North Carolina Industrial Commission (the Commission) on 12

December 2008 by filing a Form 18. Plaintiff alleged, *inter alia*, that she suffered from carpal tunnel syndrome and trigger finger - or tenosynovitis - problems of her right wrist and hand which constituted an accident or occupational disease as defined in the North Carolina Workers' Compensation Act (the Act). Plaintiff claimed that her wrist and hand issues were a result of her work with the City of Wilmington (Defendant) (and, along with Key Risk Management Services, Defendants), which work involved extensive typing on computers. Defendant contested Plaintiff's claim by filing a Form 61, in which Defendant claimed Plaintiff's injuries "did not arise out of and in the course of [Plaintiff's] employment" and that Plaintiff's claim should be denied due to "[l]ate reporting[.]" Deputy Commissioner Victoria M. Homick filed an opinion and award on 29 April 2010 in which she concluded, *inter alia*, that Plaintiff's carpal tunnel and tenosynovitis injuries constituted an occupational disease as contemplated under the Act. The deputy commissioner further concluded that Plaintiff's claim was not time barred, that any delay in providing notice to Defendant was excused and, therefore, an award of workers' compensation benefits to Plaintiff was appropriate. Defendants appealed the deputy commissioner's award to the Commission. The Commission

filed its opinion and award on 1 November 2010, in which it made the following relevant findings of fact:

3. On October 5, 1995, plaintiff began working for defendant-employer as a housekeeper and remained in that position for two years. Thereafter, plaintiff moved to a position as a department secretary with defendant-employer, where her job duties required data entry, typing, filing, answering the telephone, researching time records, ordering supplies and other general office duties.

4. On September 8, 2000, plaintiff transferred to the position of administrative support technician, which had similar duties to the department secretary job. As of the date of the hearing before the Deputy Commissioner, plaintiff continued to hold this position.

5. According to plaintiff's testimony, approximately 60-75% of plaintiff's time is spent entering data into the computer. This task includes data entry for work orders, purchase orders, invoices, reports and spreadsheets. . . . Plaintiff works from 7:00 a.m. to 4:00 p.m., with a break for lunch.

6. In 2001, plaintiff began complaining of pain, numbness and tingling along her neck and right arm. Plaintiff is right hand dominant. Plaintiff received treatments for these problems over the years from various medical providers. Plaintiff initially felt that it was the physical layout of her work station and the amount of data entry which were causing her problems.

7. Following an adjustment to her workstation, plaintiff's symptoms improved by January 2, 2002, although she still had complaints of pain extending over her right

shoulder.

8. On January 28, 2003, plaintiff underwent electro-diagnostic testing, the results of which were normal, with no evidence of carpal tunnel syndrome.

9. On July 7, 2006, plaintiff presented to Dr. [Richard] Bahner [(Dr. Bahner)], an orthopedic surgeon with Atlantic Orthopedics, with complaints of locking, clicking and pain in her right long (trigger) finger. Plaintiff reported that her middle finger had been bothering her for over six months, and the symptoms did not seem to be improving. On physical examination, plaintiff's right long finger was actively triggering and Dr. Bahner administered an injection in this finger.

10. On January 2, 2007, plaintiff returned to Atlantic Orthopedic with reports of increased pain and catching in the right long finger. On physical examination, plaintiff again had active triggering in that finger. She was also tender at the palmar flexion crease at the base of the right long finger and had pain with hyperextension.

11. Just over a year later, on January 10, 2008, plaintiff again returned to Atlantic Orthopedic with complaints of right trigger finger problems and also complaints indicative of right carpal tunnel syndrome. Dr. Bahner administered another injection to the right middle finger.

. . . .

13. On September 9, 2008, plaintiff returned to Dr. Bahner and indicated that she wanted to consider further treatment for her right long finger and her right carpal tunnel syndrome. At this visit, plaintiff's median nerve compression test was positive. Dr.

Bahner recommended that plaintiff wear a brace at work and take frequent breaks from repetitive activity.

14. On September 22, 2008, Dr. Bahner performed an open right carpal tunnel release and open right trigger finger release. Plaintiff was removed from work from September 22, 2008 through October 13, 2008, to recover from her surgeries.

15. On October 10, 2008, plaintiff presented to Dr. Bahner, who released plaintiff to return to light duty work as of October 13, 2008, with a limitation of five pounds of lifting and limited pushing, pulling and gripping with the right hand. Defendant filed a Form 19 *Employer's Report of Employee's Injury* on October 13, 2008.

. . . .

18. As a result of continued symptoms in her right long finger, Dr. Bahner ordered an MRI of plaintiff's right hand. The MRI revealed marked tenosynovitis of the third flexor tendon sheath with a large amount of fluid within the tendon sheath. On June 16, 2009, Dr. Bahner opined that plaintiff's symptoms were likely aggravated by her work activity, such as typing.

19. On August 25, 2009 plaintiff presented to Dr. Richard S. Moore [(Dr. Moore)], an orthopedic surgeon, with a specialization in the upper extremity. Plaintiff reported that she had done well post-operatively in regards to her carpal tunnel release but continued to have pain in and along the flexor tendon sheath. Dr. Moore opined that plaintiff had persistent tenosynovitis, or persistent inflammation in the flexor tendon sheath in the left and right middle fingers.

20. Dr. Moore recommended that plaintiff try anti-inflammatory medications, topical

medications, therapy and injections prior to pursuing surgery, such as a revision of her trigger finger release or a tenosynovectomy.

21. Plaintiff testified that she bowled as a hobby. This was a seasonal activity in which she engaged once per week, four times per month, from September to March. Plaintiff testified that she did not practice between games, and when she did bowl, it was for about two hours at a time, with a ball that weighed between eleven and thirteen pounds. Plaintiff also testified that bowling does not bother her hand or her long finger. Plaintiff last bowled in March 2009, and she only bowled one time that month because of personal matters. There is insufficient evidence of record to indicate that plaintiff's bowling contributed to her right trigger finger and carpal tunnel problems.

22. Dr. Bahner and Dr. Moore both testified in this matter as experts in the field of orthopedic surgery with a focus in the upper extremity.

23. Dr. Bahner opined that plaintiff had stenosing tenosynovitis isolated to her right long (trigger) finger and carpal tunnel syndrome in the right wrist. Dr. Bahner testified that trigger finger and carpal tunnel syndrome are closely related and that 50% of the people that have one condition develop the other condition since they can be similarly caused.

24. As surgery had not completely resolved plaintiff's trigger finger symptoms, Dr. Bahner opined that whatever is causing plaintiff to continue to experience inflammation of the tenosynovial is the result of some activity that plaintiff continues to perform. In other words, there is some stressor to plaintiff's right middle finger that has not resolved.

25. On the issue of causation, although Dr. Bahner could not say with medical certainty that plaintiffs work activities caused her trigger finger or carpal tunnel syndrome, he did opine that plaintiff's problems with her right middle finger were likely aggravated by activity at work, such as typing.

26. Dr. Bahner recommended a tenosynovectomy for plaintiff's right middle finger to help resolve her symptoms.

27. On the issue of causation, Dr. Moore testified that the work plaintiff performed, involving data entry or typing approximately 60-75% of the time since 2000 would more likely than not be the most significant contributing factor to plaintiff's development of carpal tunnel syndrome and trigger finger problems.

28. Dr. Moore opined that doing the same repetitive activity over and over causes stress on the limited arc of motion or a limited joint and is micro trauma, which leads to the development of tenosynovitis. With regard to plaintiff's specific work duties, Dr. Moore opined that the repetitive trauma of the data entry and typing that plaintiff performed caused the inflammation and micro trauma to her right long finger and more likely than not contributed to the development of trigger finger or tenosynovitis. Accordingly, the Full Commission finds plaintiff's right long finger tenosynovitis was caused by trauma in her employment.

29. On the issue of whether plaintiff was at an increased risk of developing carpal tunnel and trigger finger problems, Dr. Moore testified that the work plaintiff performed, involving data entry or typing approximately 60-75% of the time would place her at a greater risk for developing carpal

tunnel and trigger finger problems as compared to members of the general public.

30. Dr. Moore's opinions on causation and increased risk were based on the repetitive nature of plaintiff's work and the greater weight of the evidence of record supports that plaintiff's work involved repetitive typing. Dr. Moore took into consideration that approximately 60-75% of plaintiff's time was spent entering data or typing and this fact is also supported by the greater weight of the evidence.

31. Based on the greater weight of the medical and lay evidence of record, taken in its totality, the Full Commission finds that plaintiff's employment with defendant-employer significantly contributed to her development of right carpal tunnel syndrome and right trigger finger. Further, plaintiff's employment placed her at an increased risk of developing right carpal tunnel syndrome and trigger finger as compared to members of the general public. In addition, the Full Commission finds plaintiff's right long finger tenosynovitis was caused by trauma in her employment.

32. As of the date of the hearing before the Deputy Commissioner, plaintiff continued to experience problems with her right long finger.

The Commission affirmed all the findings and conclusions of the deputy commissioner relevant to the appeal before this Court, and ordered Defendants to pay Plaintiff temporary total disability compensation payments, along with other expenses. Defendants appeal.

In Defendants' second argument, they contend that the Commission erred in finding that Plaintiff's carpal tunnel syndrome and tenosynovitis were compensable occupational diseases pursuant to N.C. Gen. Stat. § 97-53(13). We disagree.

The applicable standard of appellate review in workers' compensation cases is well established. Appellate review of an opinion and award from the Industrial Commission is generally limited to determining: "(1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact."

The Workers' Compensation Act and the decisions of this Court clearly state that the Commission is the sole judge of the credibility of the witnesses and the weight of the evidence. Section 97-86 states that the award of the Commission "shall be conclusive and binding as to all questions of fact." This Court has explained that 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." "Thus, on appeal, this 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.'" "The evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence."

Here, plaintiff's claim . . . was filed under the catch-all disease provision of North Carolina's Workers' Compensation Act,

which encompasses, "[a]ny disease . . . which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment." N.C.G.S. § 97-53(13) (2007). In 1983 this Court explained definitively that this provision does not require that the disease originate exclusively from or be unique to the particular occupation. Instead, a plaintiff worker satisfies the elements of this statute if she shows that her employment

exposed [her] to a greater risk of contracting [the] disease than members of the public generally, and [that] the . . . exposure . . . significantly contributed to, or was a significant causal factor in, the disease's development. This is so even if other non-work-related factors also make significant contributions, or were significant causal factors.

[T]his two-pronged proof requirement for an occupational disease, increased risk and significant contribution, has been approved and applied repeatedly by this Court and the Court of Appeals.

Plaintiff has the burden of proving that her claim is compensable under the Workers' Compensation Act and specifically here, that her claim qualifies as an occupational disease. In cases involving "complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." The Commission "may not wholly disregard competent evidence"; however, as the sole

judge of witness credibility and the weight to be given to witness testimony, the Commission "may believe all or a part or none of any witness's testimony." The Commission is not required to accept the testimony of a witness, even if the testimony is uncontradicted. Nor is the Commission required to offer reasons for its credibility determinations.

Hassell v. Onslow Cty. Bd. of Educ., 362 N.C. 299, 305-07, 661 S.E.2d 709, 714-15 (2008) (citations omitted).

Defendants argue there was insufficient evidence to show that Plaintiff's employment "actually caused her conditions." Defendants misunderstand Plaintiff's burden and the role of the Commission. The Commission need only determine that Plaintiff's employment created an increased risk of, and was a significant contribution to, Plaintiff's carpal tunnel and tenosynovitis. Plaintiff need not prove that her employment was the sole cause. *Id.* Defendants do not contest any specific findings of fact; they simply argue, in effect, that the greater weight of the evidence supports their position. Defendants argue that Dr. Bahner's testimony should have been given greater weight than Dr. Moore's testimony. Weight and credibility determinations are the sole province of the Commission. *Id.*

We hold that the Commission's relevant findings, enumerated above, are supported by the evidence in the record, and that these findings support its conclusion that Plaintiff's

employment with Defendant increased the risk of contracting, and significantly contributed to, her carpal tunnel and tenosynovitis. *Hassell*, 362 N.C. at 306, 661 S.E.2d at 714. This argument of Defendants is without merit.

II.

Defendants also argue that the Commission erred in concluding that:

In the alternative, [P]laintiff has proven by the greater weight of the evidence that she contracted tenosynovitis as a result of her work with [Defendant] and that the repetitive trauma to her right long finger was caused by the pressure applied during repeated typing or data entry while working for [Defendant].

Because we have already held that the Commission did not err in concluding that Plaintiff suffered a compensable occupational disease pursuant to N.C.G.S. § 97-53(13), we do not address Defendants' argument regarding the Commission's alternative conclusion that "Plaintiff's right trigger finger was caused by trauma in the employment within the meaning of N.C. Gen. Stat. § 97-53(21)."

III.

In Defendants' third argument, they contend that the Commission erred "by refusing to bar Plaintiff's claim due to her failure to give Defendant timely notice of her alleged

occupational diseases pursuant to N.C. Gen. Stat. § 97-22 and § 97-58(b)." We disagree.

N.C. Gen. Stat. § 97-22 states in relevant part that

no compensation shall be payable unless . . . written notice is given within 30 days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

N.C. Gen. Stat. § 97-22 (2009). N.C. Gen. Stat. § 97-58 states in relevant part:

(b) The report and notice to the employer as required by G.S. 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within two years after death, disability, or disablement as the case may be.

N.C. Gen. Stat. § 97-58 (2009). The Commission in this case found as fact:

37. Although not raised in the pre-trial agreement, in its brief [D]efendant asserted that [P]laintiff's claim should be barred due to her failure to provide [D]efendant with timely notice of her alleged injury or occupational diseases pursuant to N.C. Gen. Stat. § 97-22. Plaintiff was diagnosed with

carpal tunnel syndrome in her right wrist and right trigger finger by Dr. Bahner on January 10, 2008. However, the evidence is unclear as to when or if a medical provider specifically related plaintiff's problems with her carpal tunnel syndrome and trigger finger to her employment. Furthermore, plaintiff had experienced cervical spine problems, which some physicians thought may have accounted for her right arm symptoms. Plaintiff completed an incident report for defendant-employer as soon as she realized her condition was serious enough to require surgery and received treatment from specialists for her conditions. The Full Commission finds that any delay by plaintiff in providing defendant with written notice of her claim is reasonably excused. Defendant presented no evidence of prejudice by any delay in reporting.

The Commission then concluded:

8. The time limit for filing an occupational disease claim begins when an employee is diagnosed with an occupational disease and when the employee is informed of the diagnosis and its work-related nature. *Terrell v. Terminix Services*, 142 N.C. App. 305, 542 S.E.2d 332 (2001). In the present case, [P]laintiff was diagnosed with carpal tunnel syndrome in her right wrist and right trigger finger by Dr. Bahner on January 10, 2008. Plaintiff filed her claim within two years of January 10, 2008; therefore, [P]laintiff's claim is not time barred. Further, any delay in providing [D]efendants with written notice of her claim is reasonably excused and there is insufficient evidence upon which to conclude that [D]efendants' were prejudiced by any delay.

Defendants argue that Plaintiff was without reasonable excuse for the delay in reporting following her diagnosis.

Defendants, however, do not contest the Commission's findings of fact that: (1) "the evidence is unclear as to when or if a medical provider specifically related plaintiff's problems with her carpal tunnel syndrome and trigger finger to her employment[,]"; (2) "[P]laintiff had experienced cervical spine problems, which some physicians thought may have accounted for her right arm symptoms[,]"; (3) "Plaintiff completed an accident report for defendant-employer as soon as she realized her condition was serious enough to require surgery and received treatment from specialists for her conditions[,]"; and (4) that "Defendant presented no evidence of prejudice by any delay in reporting."

However, because these findings relate to a jurisdictional issue, our Court reviews these findings *de novo*, and will substitute our own findings if necessary. *Dawkins v. Erwin Mills*, 74 N.C. App. 712, 713-14, 329 S.E.2d 688, 690 (1985). We hold that sufficient competent record evidence supports these findings, and we adopt them. We further hold that these findings support the Commission's conclusion that "any delay in providing [D]efendants with written notice of her claim is reasonably excused and there is insufficient evidence upon which to conclude that [D]efendants were prejudiced by any delay." The Commission is charged with determining to *its* satisfaction

that an employee is reasonably excused for any delay in notifying an employer, and that an employer has not been prejudiced by the delay. N.C.G.S. § 97-22; *Booker v. Medical Center*, 297 N.C. 458, 480-81, 256 S.E.2d 189, 203 (1979). We hold that the Commission's determination on this issue is sound. Defendants' third argument is without merit.

IV.

In light of our holding above, we do not address Plaintiff's appeal concerning whether Defendants waived their right to argue insufficiency of notice pursuant to N.C.G.S. § 97-22 on appeal. The Commission's 1 November 2010 opinion and award is, therefore, affirmed.

Affirmed.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).