IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 16-1281

Filed: 6 March 2018

North Carolina Industrial Commission, I.C. No. 931518

WILMA SUE CAUDILL, Employee, Plaintiff,

v.

HUITT MILLS, INC., Employer, ZURICH AMERICAN INSURANCE COMPANY, Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 18 August 2016 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 May 2017.

Vannoy, Colvard, Triplett & Vannoy, P.L.L.C., by Daniel S. Johnson, for plaintiff-appellant.

Stiles, Byrum & Horne, L.L.P., by Henry C. Byrum, Jr., for defendants-appellees.

BERGER, Judge.

Wilma Sue Caudill ("Plaintiff") appeals from an Opinion and Award filed on August 18, 2016 by the Full North Carolina Industrial Commission ("the Commission") granting Huitt Mills, Inc. ("Huitt Mills") and Zurich American Insurance Company's ("Zurich") (collectively "Defendants") request to change

Plaintiff's authorized treating physician and treatment plan for her compensable injury. We affirm the Commission's Opinion and Award.

Factual and Procedural Background

On April 3, 1989, Plaintiff injured her back while pushing and lifting a heavy object at her place of employment, Huitt Mills. At the time of Plaintiff's injury, Huitt Mills had an insurance policy covering liability under the provisions of the North Carolina Workers' Compensation Act. The parties stipulated that Plaintiff sustained a compensable injury. Plaintiff had lumbar fusion surgery in 1994, surgery to remove hardware from her back in 1996, a cervical discectomy and fusion in 1997, and another cervical discectomy and fusion in 1999. Through a referral from her orthopedic surgeon, Plaintiff began seeing Dr. Douglas Pritchard for pain management on April 29, 2002.

Dr. Pritchard initially prescribed two opioid-based narcotics, Kadian (morphine) and Roxicodone (oxycodone), to manage Plaintiff's pain. One month later, Dr. Pritchard increased her Roxicodone dosage and prescribed her OxyContin (oxycodone) due to Plaintiff's report that she was still in pain. Dr. Pritchard inserted a temporary epidural catheter for a morphine pump. On June 12, 2002, Dr. Pritchard added another pain medication, Actiq (fentanyl), to her regimen. On June 27, 2002, Plaintiff reported that she had used more than 100 Actiq doses in eleven days because she had spilled her medication in her garage. Dr. Pritchard's Physician Assistant

increased Plaintiff's Actiq dosage and prescribed her more Roxicodone. On July 10, 2002, upon Plaintiff's request, the Physician's Assistant increased Plaintiff's Actiq and Roxicodone prescriptions. During Plaintiff's next visit on August 2, 2002, Dr. Pritchard noted that Plaintiff was "on a tremendous amount of medicine" and that he was worried she would become suicidal due to the "severity of her pain." By August 29, 2002, Dr. Mark Williamson implanted a permanent morphine pump in Plaintiff, and her morphine dosage levels were increased fourteen days later. On September 29, 2005, Dr. Pritchard's medical note indicated that Plaintiff was prescribed Roxicodone, Actiq, Xanax (benzodiazepine), and a morphine pump. He also added another pain medication, Lyrica (pregabalin). Plaintiff was still rating her pain a nine out of ten in 2006.

On May 14, 2007, the parties entered into a Final Compromise Settlement Agreement and Release resolving all claims for disability compensation and attendant care, which was approved by the Commission on June 12, 2007. However, the settlement agreement did not resolve Plaintiff's continuing claim for medical compensation.

On February 22, 2008, Defendants filed a Motion to Compel Compliance With Medical Treatment. On April 17, 2008, the Commission ordered Plaintiff to cooperate fully with the medical provider assigned to her case. On June 13, 2011, Defendants filed a Motion to Compel Compliance [with] Independent Medical Examination, and

their motion was granted by the Commission on June 22, 2011. On August 5, 2011, Plaintiff was seen by Dr. Scott Sanitate, board-certified in pain medicine and rehabilitation, for an independent medical examination. Dr. Sanitate concluded that the amount of medications Plaintiff was being prescribed, aside from her morphine pump, was "extraordinary." Subsequently, in 2014, a medications review noted a pattern of refilling prescriptions one to two days earlier than necessary, resulting in Plaintiff receiving 715 surplus dosages of Actiq and 640 surplus dosages of Roxicodone since 2008.

On February 2, 2015, Defendants requested Plaintiff undergo an independent medical examination. On October 14, 2015, Defendants notified Plaintiff that an examination had been scheduled for her with Dr. Gerald Aronoff. Plaintiff did not respond and failed to appear for the appointment. In December 2015, Plaintiff notified Dr. Pritchard that her pain level was at eight or nine out of ten. On January 4, 2016, Defendants' second Motion to Compel Compliance with Medical Treatment, which noted that Plaintiff had not undergone a medical examination in almost four years, was granted. Plaintiff underwent the examination with Dr. Aronoff on January 26, 2016.

Dr. Aronoff characterized Plaintiff's pain management treatment as "dysfunctional" and his review revealed many concerns about her prescription drug use. Dr. Aronoff noted that Plaintiff was prescribed a higher starting dosage of Actiq

than recommended by the Federal Drug Administration. Further, "[d]espite 26 years of opioids, high-dose Actiq and a morphine pump," Plaintiff continued to complain of eight to nine out of ten pain without any sign of improvement. Dr. Aronoff discovered that Plaintiff had failed multiple drug screenings, two of which she failed because she tested negative for fentanyl despite being prescribed fentanyl five times per day. Dr. Aronoff's report noted that Dr. Pritchard's records failed to document that he discussed the results with her or suggested to her that she could be discharged from pain management for non-compliance.

On February 16, 2016, Defendants filed a third Motion to Compel Medical Treatment to require Plaintiff to undergo an interdisciplinary functional restoration pain rehabilitation treatment program in Charlotte, North Carolina which was recommended by Dr. Aronoff. Plaintiff noted that this program would require her husband to commute from Wilkes County to Charlotte nightly to stay with her. The Commission denied Defendants' motion on March 14, 2016.

On March 29, 2016, Defendants filed a Notice of Appeal and Request for Evidentiary Hearing. A hearing was held on April 8, 2016. The June 8, 2016 Deputy Commissioner's Opinion and Award instructed Defendants to locate a functional rehabilitation program like the program recommended by Dr. Aronoff but within a fifty-mile radius of Plaintiff's home. Per a request from the Deputy Commissioner's Opinion and Award, the director of the North Carolina Industrial Commission

Medical Rehabilitation Nurses Section prepared a letter which stated there were no other programs like the Charlotte program in North Carolina. Plaintiff appealed and Defendants cross-appealed to the Full Commission. On August 4, 2016, after a telephonic hearing was held, and on August 18, 2016, the Full Commission filed an Opinion and Award directing Defendants to select a new treating physician and Plaintiff to complete the Charlotte program recommended by Dr. Aronoff. Plaintiff gave timely notice of appeal to this Court.

Standard of Review

In reviewing the Commission's Opinion and Award, this Court "is limited to determining whether competent evidence of record supports the findings of fact and whether the findings of fact, in turn, support the conclusions of law." *Rose v. City of Rocky Mount*, 180 N.C. App. 392, 395, 637 S.E.2d 251, 254 (2006) (citation omitted), *disc. review denied*, 361 N.C. 356, 644 S.E.2d 232 (2007). "If there is any competent evidence supporting the Commission's findings of fact, those findings will not be disturbed on appeal despite evidence to the contrary." *Id.* at 395, 637 S.E.2d at 254 (citation omitted). "[T]his 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." *Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008) (citation and internal quotation marks omitted). "Unchallenged findings of fact are

presumed to be supported by competent evidence and are binding on appeal." *Allred v. Exceptional Landscapes, Inc.*, 227 N.C. App. 229, 232, 743 S.E.2d 48, 51 (2013) (citation omitted). "However, the Commission's conclusions of law are reviewed *de novo*." *Rose*, 180 N.C. App. at 395, 637 S.E.2d at 254 (citation, quotation marks, and brackets omitted).

Analysis

Plaintiff appeals from an Opinion and Award by the Commission changing Plaintiff's supervising physician and treatment plan from Dr. Pritchard's pain management plan relying on pharmaceuticals to Dr. Aronoff's rehabilitation plan consisting of inpatient and outpatient care. Plaintiff contends the Commission erred in granting Defendants' motion to change the physician and treatment plan because the Commission's conclusion of law that changing the treating physician would effect a cure or lessen her disability is unsupported by the evidence. We disagree.

Plaintiff does not challenge any findings of fact from the Commission's Opinion and Award. Therefore, we accept all findings of fact as binding upon appeal. *See Allred*, 227 N.C. App. at 232, 743 S.E.2d at 51.

Pursuant to N.C. Gen. Stat. § 97-25 (2017), employers must provide medical compensation for compensable work injuries. *See Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 541-42, 485 S.E.2d 867, 869 (1997). Generally, the employer can direct the medical treatment for a compensable injury, which includes the right to select the

treating physician, once it has accepted liability for the injury. *See Kanipe v. Lane Upholstery*, 141 N.C. App. 620, 623-24, 540 S.E.2d 785, 788 (2000) (citation omitted).

The employer has "the duty to provide all medical compensation. This medical compensation includes the providing of medical supplies, services, and treatment." *Id.* at 624, 540 S.E.2d at 788 (citing N.C. Gen. Stat. § 97-2(19)). Section 97-2 defines medical compensation "as [that which] may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability." N.C. Gen. Stat. § 97-2(19) (2017).

Section 97-25(c) states:

> [I]f the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

N.C. Gen. Stat. § 97-25(c) (2017).

Employers are also entitled to request a change in treatment pursuant to Section 97-25(c), but this request must be warranted by *reasonable grounds*. *Matthews v. Charlotte-Mecklenburg Hosp. Auth.*, 132 N.C. App. 11, 18, 510 S.E.2d 388, 393-94, *disc. review denied*, 350 N.C. 834, 538 S.E.2d 197 (1999). This Court has found that Section 97-25 "leaves the approval of a physician with the discretion of the Commission and the Commission's determination may only be reversed upon a finding of a manifest abuse of discretion." *Deskins v. Ithaca Industries, Inc.*, 131 N.C. App. 826, 832-33, 509 S.E.2d 232, 236 (1998) (citation omitted).

> It is not for a reviewing court, however, to *weigh* the evidence before the Industrial Commission in a workmen's compensation case. By authority of G.S. 97-86 the Commission is the sole judge of the credibility and weight to be accorded to the evidence and testimony before it. Its findings of fact may be set aside on appeal only when there is a complete lack of competent evidence to support them. Thus, if the totality of the evidence, viewed in the light most favorable to the complainant, tends directly or by reasonable inference to support the Commission's findings, these findings are conclusive on appeal even though there may be plenary evidence to support findings to the contrary.

Click v. Freight Carriers, 300 N.C. 164, 166, 265 S.E.2d 389, 390-91 (1980) (citations omitted).

Plaintiff's injury was declared compensable, and Huitt Mills subsequently accepted liability on April 3, 1989. Defendants requested a change in Plaintiff's treatment plan and treating physician from Dr. Pritchard's pain management plan

to Dr. Aronoff's rehabilitation treatment and plan. The Commission heard evidence that Plaintiff would have a further decline in her overall health and well-being if she continued on the current treatment plan with Dr. Pritchard. Dr. Aronoff stated the following in his Independent Medical Examination report:

> [Plaintiff] needs to recognize the likelihood that she will *continue to deteriorate* into invalidism if she does not participate and continues in the direction she is going. . . .
>
> In terms of her pain management treatment, the records appear to indicate that often it was more her subjective complaints of being unable to deal with pain that led to many of her [sacroiliac] joint injections, trigger point injections and other interventions provided by Dr. Pritchard. Of note, he did not factor in her psychological vulnerability when providing his very aggressive treatment, either interventionally or pharmacologically. Based on the multiple [Independent Medical Examination] recommendations and my record review, the interventions and high dose chronic opioid therapy was not medically indicated or necessarily related to the 1989 work injury.

(Emphasis added).

Additionally, the Commission made the following findings of fact in their Opinion and Award regarding the necessity to change Plaintiff's supervising physician and treatment plan:

> 38. The preponderance of the evidence in this matter demonstrates that the treatment Plaintiff [is] receiving from Dr. Pritchard has not effected a cure, provided Plaintiff relief, or lessened the period of her disability related to her admittedly compensable work injury. . . .
>
> 39. The preponderance of the evidence further

> demonstrates that admission to the inpatient program at Mercy Horizons Chemical Dependency Treatment Program recommended by Dr. Aronoff to treat Plaintiff's opioid dependency, followed by participation in the pain treatment functional restoration program recommended by Dr. Aronoff, or a substantially similar program, is reasonably necessary to effect a cure, provide Plaintiff relief, and lessen the period of her disability. In making this finding, the Full Commission has considered the distance between the location of the programs recommended by Dr. Aronoff, and has determined that Plaintiff's and [her husband's] concerns about the location of the programs are outweighed by Plaintiff's need for a program that will comprehensively and effectively treat her present condition.

Evidence presented to the Commission shows that Plaintiff has been seeing Dr. Pritchard since 2002, and had consistently rated her pain as severe and debilitating. The prior course of treatment, by Plaintiff's own characterization, was ineffectual and Plaintiff had become depressed and suffered from weight loss and other severe medical issues. Additionally, Dr. Aronoff's and Dr. Sanitate's medical reports did not agree with Dr. Pritchard's method of care. There was competent evidence supporting the Commission's findings of fact. The findings of fact are unchallenged on appeal and are sufficient to support the Commission's conclusion of law that the change in "Plaintiff's authorized treating physician is reasonably necessary to effect a cure, provide Plaintiff relief, or lessen the period of her disability" related to her compensable injury. *See* N.C. Gen. Stat. § 97-2(19) (2017); *see also Matthews*, 132 N.C. App. at 18, 510 S.E.2d at 393-94.

Accordingly, we hold the Commission did not abuse its discretion in granting Huitt Mill's request to change Plaintiff's medical treatment plan or physician. The evidence and findings of fact presented to the Commission tended to show that the previous treatment resulted in a continual decline in Plaintiff's overall health over an extended period of time and was not effectuating a cure or lessening Plaintiff's period of disability.

Conclusion

The Commission made several unchallenged findings of fact that support its decision to change Plaintiff's medical treatment plan and physician. Competent evidence in the record tends to show the Commission did not err in their findings of fact or conclusions of law contained in the August 18, 2016 Opinion and Award. We therefore affirm the Full Commission's Opinion and Award.

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).