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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-348

Filed: 18 December 2018

North Carolina Industrial Commission, I.C. No. 15-031891

PAULA GLASGOW, Employee, Plaintiff,

v.

PEOPLEASE CORPORATION, Employer, and NATIONAL INTERSTATE INSURANCE COMPANY, Carrier, Defendants.

Appeal by defendants from opinion and award entered 23 October 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 2 October 2018.

Levy Law Offices, by Joshua N. Levy, for plaintiff-appellee.

Wilson Ratledge, PLLC, by Scott J. Lasso, for defendants-appellants.

DIETZ, Judge.

Plaintiff Paula Glasgow injured her neck and spine while working as a truck driver for Defendant Peoplease Corporation. Peoplease and its insurer appeal the Industrial Commission's opinion and award denying their request to terminate Glasgow's temporary total disability compensation.

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As explained below, this case is resolved largely based on the narrow standard of review applicable to fact findings by the Commission. Although there is competing evidence on many of the disputed issues in this case, the challenged findings of the Commission are supported by at least some competent evidence and are therefore binding on appeal. In light of those findings, the Commission's conclusions of law are correct and we therefore affirm the Commission's opinion and award.

Facts and Procedural History

Paula Glasgow was born in 1965. Her educational background consists of an adult high school diploma and one year of general study at Fayetteville Technical Community College. From 1990 until June 2015, Glasgow worked exclusively as a commercial truck driver. Her career required her to maintain a Class A commercial truck driver's license, which requires the license holder to periodically pass a medical examination. Notably, certain conditions could disqualify her from maintaining her license, including the use of applicable narcotic medication.

In 2008, Glasgow got a job as a truck driver for Star Leasing, which later became Peoplease Corporation. In addition to driving and operating commercial motor vehicles, Glasgow's official job duties at Peoplease included "reaching and grasping with arms and hands" and lifting and moving objects weighing up to fifty pounds.

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On 29 June 2015, Glasgow, then forty-nine years old, injured her neck and shoulder on the job while rolling landing gear. The doctor who treated her that day took her out of work and prescribed Vicodin, which contains hydrocodone, a narcotic. Shortly after the accident, Glasgow reached out to Peoplease and spoke with someone in payroll and with Eric Mentzer, the Vice President of Operations. She explained her injury and asked whether there was any light duty available for her, but the company told her none was available. The Industrial Commission later determined Glasgow had a compensable injury and awarded her temporary total disability compensation.

In the months following the accident, Glasgow saw Dr. Dennis Campbell for her injuries. On 5 October 2015, after finding severe damage to Glasgow's spinal cord, Dr. Campbell performed an anterior cervical discectomy and fusion on Glasgow. For several weeks afterward, Dr. Campbell took her out of work for recovery. Before and after her surgery, Dr. Campbell consistently prescribed Vicodin to her.

Glasgow had her last appointment with Dr. Campbell on 31 December 2015. That day, she complained of tingling and numbness in her right hand, difficulty moving her neck, and swelling issues. At his deposition, Dr. Campbell testified that Glasgow's symptoms "absolutely" would affect her for the rest of her life in terms of strength and ability to lift heavy objects.

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In an encounter summary from that final appointment, Dr. Campbell wrote “[i]n terms of surgical healing, she is at the point where she can now return to full activities.” He explained to Glasgow that he would only write her one more Vicodin prescription but that she could continue taking the medication “as needed” to manage ongoing pain from her injury. Glasgow continued taking Vicodin after 31 December 2015 and throughout this litigation.

Dr. Campbell testified that he does not perform disability assessments and that he did not review Glasgow’s job description or the federal regulations governing commercial truck driving before releasing her to return to work. Instead, he noted on the encounter summary that he would “refer her either to the DMV or Department of Transportation and herself and her workers’ comp to determine her safety in terms of her going back to work as a truck driver.”

Shortly after Dr. Campbell’s release, Glasgow left her Fayetteville home and moved to Texas to live with her daughter. Glasgow called Eric Mentzer again and told him she was still taking hydrocodone and was still unable to drive a truck. Mentzer simply said “okay” and hung up.

On 6 January 2016, Peoplease terminated Glasgow on the basis that she “was released 12/31/15 to work with no restrictions.” On 20 January 2016, Defendants filed a Form 24 seeking to terminate Glasgow’s disability compensation. In a 26 February 2016 administrative decision, the Industrial Commission granted the Form 24.

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Glasgow filed a Form 33 to appeal the decision. As part of her appeal, Glasgow provided the Commission with a list of nineteen employers—all trucking companies—to which she applied for jobs, all of which were truck driver positions requiring a Class A truck driver’s license. She disclosed her injuries and medications on each application, including the Vicodin “because I still have them, and I do take them.” Her job search did not yield any interviews or job offers.

Glasgow also filed a motion to compel vocational rehabilitation, seeking community college training to help her secure employment in a field other than truck driving. The Commission denied her motion.

On 28 February 2017, after a hearing on Glasgow’s appeal, a deputy commissioner issued an opinion and award ordering Defendants to resume Glasgow’s total temporary disability compensation and to pay Glasgow any payments that had accrued since it filed its Form 24. Defendants appealed the opinion and award to the Full Commission. On 23 October 2017, the Full Commission entered an opinion and award denying Defendants’ Form 24 application. Defendants timely appealed.

Analysis

I. Abandonment of Issues under Rule 28

Before reaching the merits of this appeal, we first address Glasgow’s argument that Defendants abandoned several issues by filing a brief that violates the Rules of Appellate Procedure. Rule 28 of the Rules of Appellate Procedure limits our scope of

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review “to issues so presented in the several briefs” and states that “[i]ssues not presented and discussed in a party’s brief are deemed abandoned.” N.C. R. App. P. 28(a), 28(b)(6).

Here, Defendants’ appellate brief lists six issues presented for appeal. But instead of addressing each issue under a separate heading in the body of the brief, as is the typical practice, Defendants’ arguments are jumbled together in a single section under the heading “Argument.” Glasgow asserts that Defendants “have not presented any identifiable argument in their brief” regarding three of the issues listed in their Statement of the Issues Presented and, as a result, this Court should treat those three issues as abandoned.

Our review of the Defendants’ brief indicates that Defendants have not abandoned these issues. To be sure, Defendants’ brief does not conform to the standard practice before this Court, with separate issues asserted in distinct sections divided by headings or subheadings. Still, Defendants’ brief contains at least some argument on each of their proposed issues and we thus find those issues sufficiently preserved to avoid abandonment under Rule 28.

But we observe that this was a close case, and Defendants’ brief suffered from several other, serious rules violations (which Glasgow notes in her brief) including the failure to include a table of contents and table of authorities and, most importantly, failure to include a statement of the grounds for appellate review.

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Fortunately for Defendants, our Supreme Court has held that we should reach the merits of issues presented on appeal whenever possible, to ensure “fundamental fairness to litigants” and to “promote public confidence in the administration of justice in our appellate courts.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366 (2008). Thus, we will decline to reach the merits of an appeal only when the rules violations “impair[] the court’s task of review” or “frustrate the adversarial process” by prejudicing the opposing party. *Id.* at 200, 657 S.E.2d at 366–67. Here, as Glasgow’s well-reasoned appellee brief demonstrates, she was not prejudiced by these rules violations. Nor have they meaningfully impaired this Court’s review on the merits. We therefore address the merits fully, but remind litigants before this Court that compliance with the Rules of Appellate Procedure is mandatory.

II. Denial of Request to Terminate Compensation

Defendants challenge multiple findings of fact in the Industrial Commission’s opinion and award denying their Form 24 request to terminate compensation. Our analysis of these issues is constrained by the narrow standard of review applicable to fact finding by the Commission. On appeal, this Court reviews fact finding by the Commission to determine “whether any competent evidence supports the Commission’s findings of fact and whether the findings of fact support the

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Commission's conclusions of law." *Bowen v. ABF Freight Sys., Inc.*, 179 N.C. App. 323, 327, 633 S.E.2d 854, 857 (2006).

Defendants' underlying contention is that the Commission erred in finding that Glasgow was disabled after her treating physician released her on 31 December 2015 to "return to full activities." In workers' compensation cases, the party claiming a disability ordinarily has the burden of proving her disability. *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1980). The Worker's Compensation Act defines "disability" as the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." N.C. Gen. Stat. § 97-2(9). As we explain below, we agree with the Commission that Glasgow met her burden, and we hold that the Commission's findings to that effect were supported by competent evidence.

First, Defendants challenge the Commission's finding that Glasgow's December 2015 release was a qualified release "for surgical healing only," which "did not account for any physical limitations [Glasgow] continued to suffer" as a result of her injury. Defendants argue that this finding is erroneous because Dr. Campbell stated that he released Glasgow to "full activities."

The challenged finding is supported by competent evidence. To be sure, Dr. Campbell testified that "in terms of [Glasgow] healing from her fusion, there was no surgical contraindication for her returning to work." But Dr. Campbell explained that

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he had not performed a disability assessment of Glasgow to determine if she was capable of performing the work required for her job. Even when he stated he would have “allow[ed] her to go back to driving a truck, based on her surgical healing,” he emphasized that he was not making a judgment about her fitness to return to work and that he would leave it to “the DMV or the Department of Transportation to determine her safety of going back to work as a truck driver.”

Dr. Campbell also testified that “in terms of surgical healing, I allowed her to return to any activity that she felt she was capable of doing, but I left that in her hands,” adding that “if she didn’t feel like she was capable of lifting 10 or 20 pounds, then she shouldn’t have lifted 10 or 20 pounds.” When asked what his response would be if Glasgow did not feel she could lift that amount of weight, Dr. Campbell replied “I would take her out of work.”

In short, although the record indicates that Glasgow’s release to “full activities” did not contain any specific work restrictions, there was competent evidence in the record to support the Commission’s finding that Dr. Campbell’s decision to release Glasgow focused solely on the progress of her surgical healing and did not mean that Glasgow no longer suffered any physical limitations because of her injury. Accordingly, we are bound by the Commission’s finding.

Defendants next challenge the Commission’s finding that Glasgow “has been unable to drive a commercial truck since her last visit with Dr. Campbell . . . due to

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limitations in neck range of motion; numbness, tingling, and weakness in the upper extremities; and side effects from continued medication used to address her chronic pain.” Again, there was competent evidence to support this finding. Glasgow testified that she continued to suffer symptoms from her injury, preventing her from safely driving a truck. These symptoms included numbness and tingling in her hand and a limited ability to move her neck. Dr. Campbell testified that Glasgow suffered abduction weakness in her right shoulder, flexion weakness in her right elbow, and grip weakness in her right hand. Dr. Campbell believed Glasgow may have these symptoms for the rest of her life and that they would “absolutely” affect her ability to lift heavy objects. Glasgow also testified that she continued to take Vicodin from time to time to manage her pain using the remaining supply of an “as needed” prescription from Dr. Campbell. This testimony is competent evidence to support the challenged finding and that finding is therefore binding on this Court.

Finally, Defendants challenge the Commission’s finding that Glasgow’s “job search, while unsuccessful, has been reasonable.” Again, there is at least some competent evidence supporting this finding. The Commission found that Glasgow “sought employment in the only area she has ever worked and in which she is skilled”; that Glasgow “requested vocation rehabilitation to assist in obtaining other types of employment, however, her request has been denied by defendants”; and that Glasgow unsuccessfully applied for nineteen truck driving positions intending, if hired, to

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submit to a physical examination to determine if she was qualified to drive despite her limitations. All of these findings are supported by at least some competent evidence from Glasgow's testimony. Thus, we are bound by these findings on appeal.

In sum, applying the applicable standard of review, there is competent evidence supporting all of the Commission's findings and those findings, in turn, support the Commission's conclusions of law. Accordingly, we reject Defendants' arguments and affirm the Commission's opinion and award.

Conclusion

We affirm the Industrial Commission's opinion and award.

AFFIRMED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).