IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-483

Filed: 20 November 2018

N.C. Industrial Commission, I.C. No. 16-002598

CHRISTOPHER LAMPKINS, Employee, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Employer, SELF-INSURED (CORVEL CORPORATION, Third-Party Administrator), Defendant.

Appeal by plaintiff from opinion and award entered 19 January 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 31 October 2018.

Hardison & Cochran, P.L.L.C., by J. Adam Bridwell, for plaintiff-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Brittany K. Brown, for defendant-appellee.

TYSON, Judge.

Christopher Lampkins ("Plaintiff") appeals from a final opinion and award from the Full Industrial Commission denying his claim for workers' compensation benefits. We affirm.

I. Background

Plaintiff was employed as a correctional officer by the North Carolina Department of Public Safety ("Defendant"). He supervised inmates at the Dan River Work Farm in Yanceyville, North Carolina. At the time of his injury, he was forty-eight years old and had been employed by Defendant for nine years.

Plaintiff's work description and duties as a correctional officer required he restrain inmates, including during cell extractions, and participate in relevant training. Cell extraction training involves a team of officers entering a cell to remove an "inmate," who is an instructor. One lead officer holds a shield and is pushed into the cell by four other officers, who are flanking him on either side. The flanking officers use various techniques to restrain each limb of the "inmate." A sixth officer records the exercise. The participating officers rotate through each position during the training and complete the exercise at least six times, as they cycle through each role. Plaintiff had participated in cell extraction training for two years.

On 5 January 2016, Plaintiff was participating in cell extraction training. He initially was the lead officer entering the cell with the shield. When the other flanking officers pushed Plaintiff into the instructor "inmate," Plaintiff noticed his right shoulder was "tingling." Participants are instructed to report any injuries incurred at the conclusion of the training. Plaintiff completed the multiple exercises, did not report any injuries, and finished the remainder of his work shift.

The next morning, Plaintiff was unable to raise his right arm and reported his condition to his employer. Plaintiff was instructed to report to Urgent Care, where providers recommended Plaintiff to consult a specialist. Plaintiff was "written out of work" pending his consultations. Plaintiff's claim for workers' compensation was denied by Defendant pursuant to a Form 61 dated 19 January 2016.

Plaintiff sought additional care through his primary physician. Plaintiff was examined and assessed by an orthopedic specialist in late January, who recommended physical therapy. Due to lack of progress in physical therapy, Plaintiff received an MRI, which revealed a torn rotator cuff. Plaintiff had surgery to repair the damage in March 2016. Plaintiff returned to work on light duty at the end of April 2016, and was cleared to return for regular duty in August 2016.

Plaintiff's workers' compensation claim was heard on 22 September 2016. The Deputy Commissioner concluded Plaintiff had failed to produce evidence that he suffered an injury due to an accident on 5 January 2016. Plaintiff's claim for benefits was denied. Plaintiff appealed the decision to the Full Commission. The Full Commission affirmed the Deputy Commissioner's Opinion and Award. Plaintiff timely filed notice of appeal to this Court.

II. Jurisdiction

Jurisdiction lies in this Court from an appeal from the Opinion and Award of the North Carolina Industrial Commission pursuant to N.C. Gen. Stat. § 7A-29(a) (2017).

III. Issues

Plaintiff argues the Full Commission erred in determining he did not suffer an injury by accident, arising out of and within the course of his employment, and in denying his claims for benefits under the Workers' Compensation Act.

IV. Standard of Review

"Appellate review of an award from the Industrial Commission is generally limited to two issues: (i) whether the findings of fact are supported by competent evidence, and (ii) whether the conclusions of law are justified by the findings of fact." *Chambers v. Transit Mgmt.*, 360 N.C. 609, 611, 636 S.E.2d 553, 555 (2006). The Commission's findings are binding on appeal if supported by any competent evidence, even if evidence could support contrary findings. *Carroll v. Burlington Indus.*, 81 N.C. App. 384, 387-88, 344 S.E.2d 287, 289 (1986). Conclusions of law are reviewed by this Court *de novo*. *Lewis v. Sonoco Prods. Co.*, 137 N.C. App. 61, 68, 526 S.E.2d 671, 675 (2000).

V. Analysis

An injury under the Worker's Compensation Act is compensable "only if (1) it is caused by an 'accident,' and (2) the accident arises out of and in the course of

employment." *Pitillo v. N.C. Dep't of Envtl. Health & Natural Res.*, 151 N.C. App. 641, 645, 566 S.E.2d 807, 811 (2002); N.C. Gen. Stat. § 97-2(6) (2017). The burden rests upon the plaintiff to prove both elements of his claim. *Holley v. ACTS, Inc.*, 357 N.C. 228, 234, 581 S.E.2d 750, 754 (2003).

Precedents defining an "injury by accident" are well established. "An accident is an unlooked for event and implies a result produced by a fortuitous cause." *Gray v. RDU Airport Auth.*, 203 N.C. App. 521, 525, 692 S.E.2d 170, 174 (2010) (citation and internal quotation marks omitted). "If an employee is injured while carrying on his usual tasks in the usual way the injury does not arise by accident." *Gunter v. Dayco Corp.*, 317 N.C. 670, 673, 346 S.E.2d 395, 397 (1986) (citation omitted).

"[O]nce an activity, even a strenuous or otherwise unusual activity, becomes a part of the employee's normal work routine, an injury caused by such activity is not the result of an interruption of the work routine or otherwise an 'injury by accident' under the Workers' Compensation Act." *Bowles v. CTS of Asheville, Inc.*, 77 N.C. App. 547, 550, 335 S.E.2d 502, 504 (1985) (citations omitted). "The essence of an accident is its unusualness and unexpectedness[.]" *Gray*, 203 N.C. App. at 525, 692 S.E.2d at 174 (citation and internal quotation marks omitted).

Prior to concluding Plaintiff did not suffer an injury by accident during the 5 January 2016 incident, the Commission entered the following findings of fact:

> 2. Part of Plaintiff's responsibilities as a correctional officer included restraining inmates. However, Plaintiff testified

that he has never personally had to restrain an inmate during the tenure of employment with Defendant. Plaintiff testified that as a part of his regular job duties, he participated in regular training, including cell extraction training. Plaintiff testified that he had participated in cell extraction training for the past two years, and he performed every cell extraction exercise at least five times or more during each training session.

. . .

7. Plaintiff admitted that the usual and foreseeable amount of force would vary depending on the size of the officer. Plaintiff did not testify that any of the officers used an unusual amount of force during the cell extraction training on January 5, 2016.

8. Plaintiff testified that he performed the cell extraction exercises at least ten times the first year he participated in the training and five times the following year. In the recorded statement Plaintiff gave on January 12, 2016, Plaintiff stated that the pushing and pulling was the same as the year before and there was no difference in the cell extraction training performed on January 5, 2016 and other previous cell extraction training he had participated in. . . .

. . .

10. Lieutenant Faircloth testified that he was Plaintiff's supervisor and the cell extraction training was a part of Plaintiff's job duties. . . .

. . .

12. Mr. Darnell testified and the Full Commission finds as fact that the use of varying amounts of force is a usual part of the cell extraction training. According to Mr. Darnell, for cell extraction training the participants were instructed to use the least amount of force possible while performing the cell extraction and to only perform a reduced force

> simulated slow-motion version of each training exercise. Mr. Darnell described the cell extraction training exercises as a "walkthrough."
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> . . .
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> 29. Although the cell extraction training was not mandatory until 2016, in 2015 Plaintiff volunteered to participate . . . and he performed the cell extraction exercises . . . .
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> 30. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that the cell extraction training had become a part of Plaintiff's normal job duties as of January 5, 2016.

Plaintiff asserts the cell extraction training was not a mandatory exercise and argues this activity was not a usual part of his work routine. Plaintiff also asserts he was not accustomed to the conditions of the cell extraction training, so it could not be considered part of his normal work routine. He cites to *Church v. Baxter Travenol Labs., Inc.*, 104 N.C. App. 411, 409 S.E.2d 715 (1991), to support his arguments.

The employee in *Church* had worked for the company for five years as an accounting clerk, a job that had required no lifting. *Id.* at 412-13, 409 S.E.2d at 715. She was transferred to a production line job, which required her to wrap and seal bags and move and stack them on a truck. *Id.* at 413, 409 S.E.2d at 716. Plaintiff suffered an injury five days after this transfer. *Id.* The Commission found the employee had suffered a compensable injury by accident. *Id.* This Court affirmed the Commission's conclusion the employee was not yet proficient in her job duties and

was not performing her usual work routine after only the fifth day of working at her new duties. *Id.* at 414, 409 S.E.2d at 716.

Church is not guiding or applicable to the facts of this case. Plaintiff had not changed jobs. He had been working for Defendant as a correctional officer for nine years. Plaintiff and his supervisor testified that control and supervising inmates, cell extraction, and regular training, including training in cell extraction had always been part of his job duties. Plaintiff presented no evidence to support his assertion he was unaccustomed to the conditions during cell extraction training or that it was a new job duty.

While Plaintiff had not previously performed an *actual* cell extraction, he was required to be able to perform that duty as needed. Cell extraction training had been voluntary in previous years. Plaintiff volunteered for training in 2015 and had completed the training at least ten times that year. This previous training provided him with some reference regarding how the training was conducted. Plaintiff testified the force used in 2016 was the same as that used in the 2015 training. Plaintiff's supervisors indicated cell extraction training became mandatory in 2016.

Plaintiff also asserts he could not become accustomed to the conditions because cell extraction training changed each time it was conducted. The instructor would vary his approaches for each new exercise. As such, he argues the cell extraction training will always be an "unlooked for event."

The Commission found as a fact this varying amount of force used is a usual part of the training. *See Gray*, 203 N.C. App. at 525, 692 S.E.2d at 174. This finding was supported by Plaintiff's testimony that: (1) the amount of force varied depending on which of the officers participated in the training, due to differences in size and strength; and, (2) it was expected the instructor would vary his technique to avoid being subdued each time.

The instructor's testimony was consistent. Evidence was presented that the participants were instructed on the different types of force to use in various scenarios. Plaintiff and his supervisors all testified nothing unusual and no "unlooked for event" occurred during the training on 5 January 2016. *See id.*

Competent evidence was admitted and exists in the record to support the Commission's factual findings and conclusion that cell extraction training was part of Plaintiff's normal job duties, and its finding that nothing out of the ordinary or unusual occurred during the training on 5 January 2016. In order for Plaintiff's injury to be accidental in nature, "there must be some unforeseen or unusual event other than the bodily injury itself." *Rhinehart v. Market*, 271 N.C. 586, 588, 157 S.E.2d 1, 3 (1967).

The Full Commission's findings of fact support its conclusion that Plaintiff failed to prove his injury resulted from an accident, as defined by N.C. Gen. Stat. § 97-2(6). *See Pitillo*, 151 N.C. App. at 645, 566 S.E.2d at 811. Because only injuries

that are caused by an accident are compensable under the Workers' Compensation Act, the Full Commission properly concluded Plaintiff is not entitled to any compensation. *See* N.C. Gen. Stat. § 97-2(6).

VI. Conclusion

Competent evidence supports the Commission's findings of fact, and its findings of fact support its conclusions of law. The Full Commission's Order and Award denying Plaintiff's claim for benefits under the Workers' Compensation Act is affirmed. *It is so ordered.*

AFFIRMED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).