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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1125

Filed: 4 June 2019

North Carolina Industrial Commission, No. 16-021415

TONI DAY, Employee, Plaintiff,

v.

AMERICAN AIRLINES, Employer, and AMERICAN INSURANCE GROUP PLAN,
Carrier, Defendants (Administered by SEDGWICK, CMS).

Appeal by Plaintiff from opinion and award entered 30 July 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 April 2019.

The Law Offices of Timothy D. Welborn, P.A., by Timothy D. Welborn, for the Plaintiff-Appellant.

Wilson Ratledge, PLLC, by Frances M. Clement and Daniel C. Pope, Jr., for the Defendants-Appellees.

DILLON, Judge.

Plaintiff Toni Day appeals from the opinion and award of the Industrial Commission denying her claim for workers' compensation benefits. Plaintiff contends that the Commission failed to make findings regarding each witness's testimony and that the evidence presented did not support the Commission's denial of her claim. After careful review, we affirm.

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I. Background

Plaintiff was formerly employed as a flight attendant by Defendant American Airlines for a number of years. On or about 30 April 2016, Plaintiff allegedly suffered an injury while working on a flight when she attempted to dislodge a wheelchair from its compartment onboard the plane.

Plaintiff filed a claim for workers' compensation, Defendant denied the claim, and Plaintiff requested a hearing to determine compensability. A deputy commissioner conducted a hearing and filed an Opinion and Award granting Plaintiff partial relief, which both Plaintiff and Defendant appealed. The Full Commission then conducted a hearing and wholly denied Plaintiff's claim on credibility grounds. Plaintiff now appeals the Commission's Opinion and Award denying her claim.

II. Analysis

Plaintiff contends, overall, that the Commission erred in deciding that her claim was not compensable under our Workers' Compensation Act. Our review of the Commission's opinion and award is limited to "whether the Commission's findings of fact are supported by competent evidence and whether the Commission's conclusions of law are justified by its findings of fact." *Hendrix v. Linn-Corriher Corp.*, 317 N.C. 179, 186, 345 S.E.2d 374, 379 (1986). The Commission's findings of fact and conclusions of law, when supported, are binding on appeal, "even though there is evidence that would have supported a finding to the contrary." *Creighton v. Snipes*,

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227 N.C. 90, 93, 40 S.E.2d 612, 614 (1946). “The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.” *Anderson v. Lincoln Const. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965).

For a claim to be compensable under the Workers’ Compensation Act, the injury must “aris[e] out of and in the course of the employment.” N.C. Gen. Stat. § 97-2(6) (2015). An injury “arises out of” employment where there is a causal connection between the injury and the employment. *Bolling v. Belk-White Co.*, 228 N.C. 749, 751, 46 S.E.2d 838, 839 (1948). “In the course of” employment refers to the “time, place, and circumstances under which an accidental injury occurs[.]” *Withers v. Black*, 230 N.C. 428, 432, 53 S.E.2d 668, 672 (1949).

Plaintiff argues that the Commission erred in two respects. We address each argument in turn.

A. Findings About All Witnesses

Plaintiff first argues that the Commission erred in not making findings regarding the credibility of testimony presented by her co-workers. We disagree.

During the hearing before the Full Commission, a number of Plaintiff’s co-workers testified on her behalf, describing the events which allegedly caused Plaintiff’s injury. The co-workers explained that Plaintiff was injured while dislodging a wheelchair from a cramped location on the plane and that Plaintiff expressed pain immediately following the event. In its findings 26, 27, 28, 29, and

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30, the Commission recounts the testimony of each of Plaintiff's co-workers, but does not, admittedly, make any findings as to their credibility.

Plaintiff argues that this failure to make credibility findings shows that the Commission "impermissibly disregarded" her co-workers' testimony, analogous to the circumstances in *Weaver v. American National Can Corporation*. *Weaver v. Am. Nat. Can Corp.*, 123 N.C. App. 507, 510, 473 S.E.2d 10, 12 (1996) ("The Industrial Commission may not discount or disregard any evidence, but may choose not to believe the evidence *after* considering [*all* of the evidence].") (emphasis in original)). However, in *Weaver*, the Commission's opinion and award not only failed to define the credibility of the plaintiff's witnesses, but made no findings mentioning the witnesses' testimony at all. *Id.* at 511-12, 473 S.E.2d at 12; see *Sheehan v. Perry M. Alexander Const. Co.*, 150 N.C. App. 506, 515, 563 S.E.2d 300, 306 (2002) (noting that the Court previously found evidence "impermissibly disregarded" where the Commission's opinion and award "made no mention [of the evidence] whatsoever").

A lack of findings as to a witness's credibility does not mean that the Commission totally disregarded that testimony. It is true that the Commission did not make findings of fact declaring the respective credibility of each of Plaintiff's co-workers. However, a number of the Commission's unchallenged findings specifically reference Plaintiff's co-workers or actually describe their testimony in detail. See *Medlin v. Weaver Cooke Const., LLC*, 367 N.C. 414, 423, 760 S.E.2d 732, 738 (2014).

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These findings show that the Commission considered the witnesses' testimony before making its ultimate determination that Plaintiff's version of events was not credible. *See Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000) (stating it is "clear that the Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible").

B. Supporting Evidence

Next, Plaintiff specifically challenges findings 37, 38, and 39, which contain the Commission's ultimate findings regarding Plaintiff's credibility. In these findings, the Commission states that it does not find Plaintiff credible due to inconsistencies in her explanation of the cause of her injury, the date of onset, and the date she reported the injury, as well as additional witness testimony contradicting Plaintiff's version of events. Plaintiff contends that the evidence does not support these findings, and that, without them, the Commission's conclusions of law are also unsupported.

Plaintiff contends that the evidence showed that her injuries were caused by the wheelchair being out of place. Ordinarily, wheelchairs are stored under an aisle seat near the handicap lavatory, where there is extra space. On the day of the incident, the wheelchair was stored under a seat with less space and was difficult to remove. In addition to her own testimony, Plaintiff presented multiple witnesses who testified to the unusual placement of the wheelchair, as well as the difficulty Plaintiff

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and her co-workers experienced while removing the wheelchair from under the seat and the injuries allegedly suffered by Plaintiff as a result.

However, other competent evidence contradicted Plaintiff's account of her injury. First, findings 9, 10, 11, 12, and 13 describe actions by Plaintiff that are inconsistent with a causal connection between her employment and her injury, yet Plaintiff has not challenged these findings on appeal. *Medlin*, 367 N.C. at 423, 760 S.E.2d at 738 (“[W]here findings of fact are not challenged and do not concern jurisdiction, they are binding on appeal.”). These unchallenged findings constitute support for the Commission's ultimate findings and conclusions of law. The evidence before the Commission showed that Plaintiff initially sought care from a doctor outside Defendant's workers' compensation network, did not present on multiple occasions and to multiple medical practitioners that her injuries came from activity at work, and did not properly submit her workers' compensation claim initially despite having submitted multiple claims in the past. Further, the Commission explicitly found that causation opinions offered by Plaintiff's witnesses were not credible because they were rendered solely from Plaintiff's own subjective reports, a determination that the Commission was free to make.

Findings which are supported by the evidence are binding on this Court even in the face of contradictory evidence. *Snipes*, 227 N.C. at 93, 40 S.E.2d at 614. This Court “does not have the right to weigh the evidence and decide the issue on the basis

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of its weight.” *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274. While there was evidence from which a reasonable fact-finder could determine that Plaintiff’s injury was compensable, the evidence also supported a view that Plaintiff’s injury did not arise out of and in the course of her employment. There was evidence which supported the Commission’s finding that Plaintiff incurred her injury prior to or outside of her experience with the wheelchair. Therefore, we must affirm the Full Commission’s opinion and award denying Plaintiff compensation.

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).