IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-999

Filed 05 July 2023

North Carolina Industrial Commission, I.C. No. 21-001716

LUIS I. RODRIGUEZ, Employee, Plaintiff,

v.

MABE STEEL INC., Employer, BRIDGEFIELD CASUALTY INSURANCE COMPANY, Carrier, Defendants.

Appeal by defendants from order entered 11 August 2022 by the North Carolina Industrial Commission. Heard in the Court of Appeals 6 June 2023.

Hyland & Padilla, PLLC, by Andrea L. Fowler for plaintiff-appellee.

Mullen Holland & Cooper P.A., by Michael A. Cannon, for defendants.

ARROWOOD, Judge.

Employer, Mabe Steel, Inc., and insurance carrier, Bridgefield Casualty Insurance Company (collectively "defendants") appeal from the North Carolina Industrial Commission's (the "Commission") opinion and award concluding defendants must pay a portion of Luis I. Rodriguez's ("plaintiff") adaptive housing expenses. Defendants contend the Commission erred in determining that plaintiff shall contribute only $400 per month toward his future housing costs when he paid

approximately $1200 for his housing expenses pre-injury. For the following reasons, we affirm.

I. Background

Plaintiff worked in the steel industry for twenty-two years. On 11 January 2021, plaintiff sustained an admittedly compensable injury in the course of his employment when he was struck in the head by a steel beam, causing a spinal cord injury and rendering him a paraplegic. As a result of the accident, plaintiff suffers from "spasticity, neurogenic bladder, neurogenic bowel, . . . [and] neurogenic sexual function[,]" and maintains susceptibility to imbalance.

Initially, plaintiff was treated at Moses Cone Hospital in Greensboro, North Carolina and later transferred to the Shepherd Center in Atlanta, Georgia for inpatient treatment and rehabilitation. While receiving treatment at the Shepherd Center, plaintiff was informed that he would never walk again.

In April 2021, plaintiff entered inpatient rehabilitation at Learning Services in Raleigh, North Carolina. On 12 October 2021, Patrick James O'Brien, M.D. ("Dr. O'Brien"), plaintiff's treating physician, advised that plaintiff required ADA-compliant housing. In December 2021, plaintiff's team at Learning Services resolved that he did "not require skilled nursing care[,]" as he "demonstrated sufficient improvement in his physical abilities" and was able to "live independently[.]"

On 23 March 2022, plaintiff filed an expedited medical motion regarding his adaptive housing needs as his pre-injury living arrangements were no longer suitable

on account of his injury and could not "be modified to become ADA compliant." Pre-injury, plaintiff rented a room in his brother's mobile home for $400 per month for occasional use. Due to the nature of plaintiff's employment, he was required to travel frequently and received a daily stipend of $60 to cover hotel expenses and food.

Plaintiff's matter was heard before Deputy Commissioner Wes Saunders on 7 April 2022. Testifying witnesses included Alisa Daggly Cornetto ("Ms. Cornetto"), a certified nurse life care planner. Ms. Cornetto testified that based on plaintiff's medical needs, he required a living arrangement with at least two-bedrooms, either "an apartment or a modified home[.]" Ms. Cornetto indicated that plaintiff's medical equipment will need to be at "accessible levels" and generally, mobile homes are "inappropriate . . . due to the difficulties that [a mobile home] could present for emergency egress and maneuverability."

Dr. O'Brien was deposed on 25 April 2022. Dr. O'Brien testified that plaintiff "is totally and permanently disabled as a result of his work-related injury" but is "able to live independently." Dr. O'Brien also indicated that plaintiff's living arrangements required "extra" space for his medical equipment. Dr. O'Brien testified further that plaintiff required "accommodations for his transportation[,]" including "transportation to all of his appointments" and "some form of accommodation for transportation for social and societal needs."

The parties deposed April Groff, Ph.D. ("Dr. Groff"), a clinical psychologist and specialist in neuropsychology and rehabilitation, on 6 May 2022. Primarily, Dr.

Groff's career focused on individuals suffering from traumatic brain and spinal cord injuries. As a part of her testimony, Dr. Groff identified specific adaptive housing measurements plaintiff required due to his injuries. One such requirement was a "handicap-accessible parking space" with specific clearance requirements. With respect to his bathroom, Dr. Groff recommended: "a handheld shower with a hose that's at least 60 inches in length" with "grab bars that hold 250 pounds[,] . . . behind the toilet at 32 inches long and beside the shower at 24 inches long, affixed horizontally"; "a toilet seat that's a minimum [of] 4 to 6 inches on both sides of the toilet to allow safe placement of a commode chair"; a "path to the toilet . . . at least 36 inches wide"; and a sink "mounted no more than 34 inches from the floor" with a clearance of "29 inches . . . under the edge of the sink for wheelchair access." Dr. Groff further recommended a bathroom with "a roll-in shower that's free of lips or thresholds[,]" and if the bathroom contains "a bathroom-shower combination, the space must allow for a tub bench to be placed and accommodate a minimum of 36 inches . . . clearance for safety, related to [plaintiff's] wheelchair mobility."

With respect to plaintiff's bedroom, Dr. Groff recommended: at least "36 inches of clear pathway on each side of the bed and at the foot of the bed"; "bed height from floor to top of the mattress . . . be [at least] 23 inches or adjustable"; and a closet with "sliding or [bifold] doors with rods and shelv[es] that are within 48 inches [of] the floor . . . [with] shelves . . . no more than 18 inches deep." Lastly, Dr. Groff noted that plaintiff's kitchen required "roll-under access under the countertop and sink[,]" "lower

cabinets [with] . . . a full extension drawer and fixed shelves, no doors[,]" with each appliance being "operable from his chair height."

In the amended opinion and award entered 13 June 2022, Deputy Commissioner Saunders concluded that plaintiff's adaptive housing costs should be apportioned based on the following guidelines:

> a. Defendants shall pay a percentage of [p]laintiff's initial monthly rent at a value equal to 1 ÷ (the total number of bedrooms) to account for [d]efendants' payment of an extra bedroom for [p]laintiff's medical equipment.
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> i. For example, if [p]laintiff's (sic) rents a three-bedroom apartment for $1,800.00 per month. Defendants shall be responsible for $600.00 ($1,800.00 ÷ 3 bedrooms). Plaintiff would be responsible for the rent for the two (2) other bedrooms–one (1) for himself and one (1) for his daughters.
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> b. Thereafter, [d]efendants shall be responsible for 100% any increases in [p]laintiff's monthly rent. The formula for [d]efendants (sic) rental obligations is (Def Rent = (Current Total Rent – Year 1 Total Rent) + Defendant's (sic) Year 1 Rent.

Both parties entered notices of appeal to the Full Commission on 22 and 23 June 2022. On 28 July 2022, plaintiff's matter was reviewed by the Commission and its opinion and award was entered on 11 August 2022. The Commission found "given that [p]laintiff does not own or have access to a dwelling that would be suitable to modify, [he] is entitled to have [d]efendants furnish ADA-compliant housing containing two bedrooms or one bedroom and an equivalent bonus room as well as

the adaptive amenities listed by Dr. Groff[.]" Accordingly, the Commission ordered that defendants were "responsible for the cost difference between [plaintiff's] pre-injury housing expense, which was $400 monthly, and the cost of ADA-compliant housing[.]" The Commission's order stated further that defendants must "provide reasonable adaptive transportation[,]" "a unit for a minimum rental period of one-year, and . . . assist [p]laintiff with procuring suitable housing by providing reasonable financial assurances to lessors to facilitate a lease agreement."

Defendants timely appealed on 8 September 2022.

II. Discussion

The central issue on appeal is related to plaintiff's pre-injury living expenses. Defendants assert the Commission erred by concluding that plaintiff must contribute only $400 towards his future housing expenses, contending the Commission "improperly excluded $805.00" in monthly rental expenses plaintiff expended on hotel costs pre-injury. We disagree.

A. Standard of Review

"[O]n appeal from an award of the Industrial Commission, review is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law." *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citation omitted), *reh'g denied*, 363 N.C. 260, 676 S.E.2d 472 (Mem) (2009). The reviewing "court's duty goes no further than to determine whether the

record contains any evidence tending to support the finding." *Id.* (citation and internal quotation marks omitted). "Even where there is evidence to support contrary findings, the Commission's findings of fact are conclusive on appeal if supported by any competent evidence." *Snead v. Carolina Pre-Cast Concrete, Inc.*, 129 N.C. App. 331, 335, 499 S.E.2d 470, 472 (citation omitted), *cert. denied,* 348 N.C. 501, 510 S.E.2d 656 (Mem) (1998). If the Commission's findings "are predicated on an erroneous view of the law or a misapplication of the law, they are not conclusive on appeal." *Simon v. Triangle Materials, Inc.*, 106 N.C. App. 39, 41, 415 S.E.2d 105, 106 (1992) (citation omitted). The Commission's conclusions of law are reviewed *de novo*. *Snead*, 129 N.C. App. at 335, 499 S.E.2d at 472 (citation omitted).

B. Adaptive Housing

Our Supreme Court previously established it is the employer's duty to "furnish alternate, wheelchair accessible housing to an injured employee where the employee's *existing quarters* are not satisfactory and for some exceptional reason structural modification is not practicable." *Derebery v. Pitt Cnty. Fire Marshall*, 318 N.C. 192, 203, 374 S.E.2d 814, 821 (1986) (emphasis added). This Court reinforced this principle in *Timmons v. N.C. Dep't of Transp.*, 123 N.C. App. 456, 462, 473 S.E.2d 356, 359 (1996), *aff'd per curiam,* 346 N.C. 173, 484 S.E.2d 551 (Mem) (1997), and again in *Espinosa v. Tradesource, Inc.*, 231 N.C. App. 174, 752 S.E.2d 153 (2013), *disc. review denied,* 763 S.E.2d 391 (Mem) (2014).

In *Espinosa*, the plaintiff was rendered paraplegic due to a work-related injury. *Espinosa*, 123 N.C. App. at 176, 752 S.E.2d at 155. The plaintiff shared a rental property with three other individuals and his "*pro rata* share of the rent was $237.50 per month." *Id.* at 181, 752 S.E.2d at 158. Because the plaintiff's pre-injury living arrangements were no longer suitable on account of his injury, we affirmed the Commission's decision to award plaintiff "the *pro rata* difference between the rent required for [p]laintiff's new, handicapped-accessible home and the rent [p]laintiff had to pay as an ordinary expense of life before his injury." *Id.* at 181, 186, 752 S.E.2d at 158, 161. We found that "[t]he Commission sensibly reasoned that living arrangements constitute an ordinary expense of life and, thus, should be paid by the employee. . . . [H]owever, . . . a change in such an expense, which is necessitated by a compensable injury, should be compensated by the employer." *Id.* at 186, 752 S.E.2d at 161.

In the instant case, after analyzing our well-settled precedent, the Commission found that plaintiff's "unusual pre-injury housing situation" was factually similar to the plaintiff of *Espinosa*, since plaintiff did "not own or have access to a dwelling that could be suitable to modify[.]" We agree. Plaintiff's pre-injury living arrangements included a room he rented in his brother's mobile home for $400. Ms. Cornetto specifically testified that a mobile home was generally inappropriate for individuals with plaintiff's injuries, meaning plaintiff would not have access to suitable housing

and would need to acquire new housing that would meet the requirements recommended.

Furthermore, the daily stipend plaintiff received to cover his living expenses when traveling for work was heard and considered by the Commission, and it was within the Commission's discretion to discern the evidence presented. The Commission specifically noted that the daily stipend plaintiff received for travel was provided by his employer only because he was required to travel for work. On appellate review, we do "not have the right to weigh the evidence and decide the issue on the basis of its weight. The [C]ourt's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Anderson v. Const. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965) (citation omitted).

"Even where there is evidence to support contrary findings, the Commission's findings of fact are conclusive on appeal if supported by any competent evidence." *Snead*, 129 N.C. App. at 335, 499 S.E.2d at 472 (citation omitted). Here, there was competent evidence to support the Commission's findings that plaintiff's pre-injury rental expenses were $400 per month, and the fact that there was also evidence of a stipend is irrelevant since the Commission's findings of fact regarding the housing costs are conclusive on appeal. *See id.*

Accordingly, as there was competent evidence to support the Commission's findings that plaintiff could not utilize his brother's mobile home and required new housing, and his pre-injury rental expenses were $400 per month, not including the

employer compensation he received for travel necessitated by his employment, defendants' arguments are overruled.

III. Conclusion

For the foregoing reasons, the Commission's order and award is affirmed.

AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).