IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-418

Filed 5 March 2024

North Carolina Industrial Commission, No. 13-719914

CARMELA BLACKWELL, Employee, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION/ BUNCOMBE COUNTY SCHOOLS, Employer, SELF-INSURED (SEDGEWICK CMS, Administrator), Defendant.

Appeal by plaintiff from judgment entered 13 December 2022 by Chair Philip A. Baddour, III, for the North Carolina Industrial Commission. Heard in the Court of Appeals 14 November 2023.

Thomas F. Ramer for the plaintiff.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Matthew E. Buckner, for the defendant.

DILLON, Chief Judge.

This present appeal is the second to our Court. In the first appeal, we vacated the denial by the Full Commission of the request by Plaintiff Carmela Blackwell that her disability award be paid in a single lump-sum, where the Commission based its denial on its conclusion that it lacked the authority to grant a lump-sum award. *See*

Blackwell v. N.C. Dep't of Pub. Instruction, 282 N.C. App. 24, 870 S.E.2d 612 (2022).

On remand, the Commission again denied Plaintiff's request. She appeals.

I. Background

Plaintiff is a former high school teacher who was injured when she intervened in an altercation between several students. She was diagnosed with numerous physical and mental injuries.

The Commission found Plaintiff to be permanently and totally disabled and awarded her weekly benefits. Plaintiff then requested her award be converted into a single, lump-sum payment, pursuant to N.C. Gen. Stat. § 97-44 (2018). Her request was denied by the Full Commission on the grounds that a lump-sum award is never allowed where the sum of future installments is uncertain.

On appeal, we vacated the Full Commission's determination, concluding that a plaintiff may be eligible to receive a lump sum payment instead of continuing to receive weekly benefits for the duration of her life, however long that may be. *See Blackwell*, 282 N.C. App. at 28, 870 S.E.2d at 615. Accordingly, we remanded the matter to the Commission for reconsideration, including whether Plaintiff met her burden of proving that hers was an "unusual case" such that a lump-sum award was in her best interests. *Id.*

On remand, Plaintiff argued that her case was "unusual" within the definition of § 97-44, because prior to the first hearing on this matter, she had experienced some delays in obtaining her weekly checks. These delays caused her anxiety. However,

there was no evidence that Plaintiff continued to experience any delays, and she did not articulate any financial reason for requesting a lump-sum payment. As a result, the Full Commission ultimately concluded that Plaintiff had not met her burden of proving that her case was unusual, such that a lump-sum award was in her best interests. Plaintiff timely appealed.

II. Analysis

Our appellate review is limited to determining "(1) whether the Commission's findings of fact are supported by competent evidence, and (2) whether the Commission's conclusions of law are justified by its findings of fact." *Sprouse v. Mary Turner Trucking*, 384 N.C. 635, 642-43, 887 S.E.2d 699, 706-07 (2023). Unchallenged findings of fact are presumed binding on appeal. *Id*. at 647, 887 S.E.2d at 709.

As the fact-finding body under the Worker's Compensation Act (the "Act"), the Commission "is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Lincoln*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). As a result, our 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." *Id.* at 434, 144 S.E.2d at 274 (emphasis added). *See also* N.C.G.S. § 97-86 (2021) ("The award of the Industrial Commission . . . shall be conclusive and binding as to all questions of fact. . . ."). Finally, "[t]he evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the

benefit of every reasonable inference to be drawn from the evidence." *Sprouse*, 384 N.C. at 643, 887 S.E.2d at 706-07 (quoting *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 115, 530 S.E.2d 549 (2000).

One purpose of the Act is to ensure that employees injured on the job be compensated for lost earning ability. *Whitley v. Columbia*, 318 N.C. 89, 98, 348 S.E.2d 336, 341 (1986). Periodic payments are favored because they "prevent the employee or his dependent from dissipating the means for his support and thereby becoming a burden on society." *Harris v. Lee Paving*, 47 N.C. App. 348, 349, 267 S.E.2d 381, 383 (1980). However, the Act gives the Commission the authority to allow a lump-sum award pursuant to N.C. Gen. Stat. § 97-44 in some circumstances:

> Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, in *unusual cases*, where the Industrial Commission deems it to be in the *best interest of the employee* or his dependents, . . . be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Commission . . . .

(Emphasis added).

On appeal, Plaintiff argues that the Commission erred when it denied her request for a lump-sum payment of her award. We address her arguments in turn.

A. Findings of Fact

Plaintiff first challenges the Commission's finding that:

> [B]oth doctors opined it would be in Plaintiff's best interest to have her worker's compensation claim resolved to the greatest extent possible to remove as many stressors as

> possible. However, neither doctor demonstrated an understanding that Plaintiff is not currently experiencing stressors related to the portion of her claim that would be resolved (payment of disability compensation), while leaving open the portion of the claim that is currently causing stress to Plaintiff (issues related to medical treatment). Therefore, the Full Commission affords little weight to the testimony of Dr. Callahan and Dr. Feldman as to the issue of whether it is in Plaintiff's best interest for her weekly disability compensation to be paid in a lump sum….

Plaintiff challenges this finding on the basis that the Commission "ignored the uncontradicted evidence and opinions of both Drs. Callahan and Feldman that the normal processing of [Plaintiff's] claim, including the weekly benefits, was not providing the relief intended by the Act", and as a result, failed to view the evidence in the "light most favorable to plaintiff". *Sprouse*, 384 N.C. at 643, 887 S.E.2d at 706. In making this argument, Plaintiff points to several excerpts of testimony from Plaintiff's neurologist, Dr. Callahan, and Plaintiff's psychologist, Dr. Feldman.

Here, although both physicians agreed that Plaintiff's worker's compensation claim was causing her stress, both physicians referenced the claim in very broad terms and did not specifically state or discuss *how* Plaintiff experienced stress specifically related to her weekly compensation. Specifically, Dr. Callahan testified that in his opinion that "there is no real opportunity for any dramatic improvement" without the removal of "some of the barriers that she feels that she has related to the structure of Workman's' Comp…." When asked by Plaintiff's counsel whether removing any stressor pertaining to Plaintiff's weekly benefits would benefit her

health, Dr. Callahan responded that it "would be an option, yes." Similarly, Dr. Feldman, Plaintiff's treating psychologist, testified that "resolution on of as many issues [as possible] on a full and final basis" would be in her best interest and would improve her chances of recovery. And despite Plaintiff's contention that the Commission ignored the advice of Plaintiff's treating physicians, the Commission summarized their testimony in the challenged finding, but ultimately gave it little weight because, as stated in the finding, "neither doctor demonstrated an understanding that Plaintiff is not currently experiencing stressors related to the portion of her claim that would be resolved (payment of disability compensation)". Thus, the Commission did not ignore the testimony of Drs. Callahan and Feldman.

Further, Plaintiff appears to be contesting the amount of weight given to Dr. Callahan and Dr. Feldman's testimony by the Commission. However, any argument regarding the weight the Commission afforded the testimony cannot be considered by our Court. *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274 (recognizing that "the court's duty goes no further than to determine whether the record contains *any* evidence tending to support the finding.")

Plaintiff additionally challenges several of the Commission's findings of fact stating that Plaintiff failed to show that her case was unusual compared to "other workers' compensation claims" and "other patients". Plaintiff argues that these findings are not supported by the evidence because the Commission did not cite specific evidence about the "similar consequences experienced by such unnamed and

undefined other claimants or other patients." However, the Commission's findings were based on the testimony of Plaintiff's treating physicians. Specifically, Dr. Feldman testified that Plaintiff's condition was "not uncommon", and Dr. Callahan testified that the "cluster of symptoms" Plaintiff experienced was "not necessarily unique" among his patients. There is no evidence in the record regarding the facts or circumstances of other worker's compensation cases or patients. Thus, we conclude that these challenged findings are supported by competent evidence. *Sprouse,* 384 N.C. at 642-43, 887 S.E.2d at 706-07.

B. Conclusions of Law

We next consider whether the findings support the Commission's conclusions.

Plaintiff argues the Commission omitted the correct "legal standard" in its determination that Plaintiff's case was not "unusual" within the meaning of § 97-44. Specifically, Plaintiff contends that the Commission should have considered not just Plaintiff's financial condition, but also whether the "relief afforded" by a lump sum payment would be greater than that accomplished through weekly payments. Plaintiff pulls this language from our Court's decision in *Harris*, 47 N.C. App. 348, 267 S.E.2d 381 (1980). Specifically, Plaintiff argues that the Commission failed to properly consider how her weekly compensation caused stress and "exacerbate[d] her symptoms of anxiety, depression, or PTSD."

In *Harris*, our Court affirmed the Commission's award of a lump sum payment to the plaintiff, because upon the expiration of the plaintiff's weekly compensation,

she would have had nine more years of mortgage payments but would be too advanced in age to support herself from labor. In reaching this determination, our Court noted, "[t]he record convinces us that the *relief afforded* by a lump sum payment would not be temporary only, bringing about greater economic difficulty in the future, but rather would secure to plaintiff a place to live out her later years." *Id.* at 351, 267 S.E.2d at 384. Based on this language, Plaintiff argues that the Commission should have considered whether a lump-sum award would "effect a cure or give relief". N.C. Gen. Stat. § 97-2 (19) (2021) (defining "medical compensation"). However, this language is the Act's definition of the purpose of medical compensation, which is just *one* purpose of the Act. And there is no authority to support Plaintiff's characterization of this purpose as a legal standard.

Instead, the primary purpose of the Act is to compensate injured employees for lost earning ability. *Whitley*, 318 N.C. at 98, 348 S.E.2d at 341. In effectuating this goal, the Commission is only bound to consider whether a plaintiff's case is "unusual" such that a lump sum award is in her best interests. N.C. Gen. Stat. § 97-44. This determination is made based on the specific facts and circumstances applicable to the plaintiff's case. *See e.g., Harris,* 47 N.C. App. at 350, 267 S.E.2d at 383.

Regardless, we conclude that the Commission *did in fact* consider circumstances beyond Plaintiff's financial condition. In its fourth finding of fact, which Plaintiff does not challenge, the Commission found that:

> Issues related to Plaintiff's worker's compensation

> benefits—including occasional delays in medication authorization, the questioning of medical providers as to less expensive prescriptions, and delays in the receipt of weekly disability checks—can exacerbate Plaintiff's stress and anxiety levels. However, Plaintiff's husband, who Plaintiff has granted a power of attorney, testified that *Plaintiff has not experienced issues with receiving timely weekly disability compensation since prior to the first hearing on the matter*, after which the parties entered into a consent order in May 2016. Further, Plaintiff is not alleging any ongoing issues with receiving weekly total disability compensation.

Thus, we conclude that the Commission *did* consider the impact of weekly compensation on Plaintiff's stress levels but did not ultimately find Plaintiff's case "unusual" because there were no ongoing issues or stressors with receiving the compensation. Rather, the Commission found that the portion of Plaintiff's claim causing her stress was related to medical treatment, not to the manner in which she was receiving her award.

After careful review of the record and the Commission's order, we conclude that the Commission did not err by concluding that Plaintiff failed to meet her burden of showing that her case was unusual within the meaning of § 97-44. As a result, we affirm the Commission's denial of Plaintiff's request that her indemnity award be paid in a lump sum.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).