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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-723

Filed 5 March 2024

North Carolina Industrial Commission, IC No. 17-022057

JOHN KEENAN, Employee, Plaintiff,

v.

FEDERAL EXPRESS CORP., Employer, SELF-INSURED (SEDGWICK CMS, Third Party Administrator), Defendant.

Appeal by Defendants from opinion and award entered 14 March 2023 by the North Carolina Industrial Commission. Heard in the Court of Appeals 6 February 2024.

Sumwalt Anderson Law Firm, by Mark T. Sumwalt, Richard L. Anderson, and Lauren H. Walker, for Plaintiff-Appellee.

Cranfill Sumner LLP, by Steven A. Bader and J. Michael Ricci, for Defendant-Appellants.

GRIFFIN, Judge.

Defendants Federal Express Corporation (“FedEx”) and Sedgwick Claims Management Services, Inc., appeal from an opinion and award of the Full Commission of the North Carolina Industrial Commission awarding Plaintiff John Keenan previous and ongoing medical expenses, total disability compensation, and

attorney fees. Defendants argue the Full Commission erred by relying on hypothetical and speculative medical testimony insufficient to prove causation for Plaintiff's injury. We hold there was competent evidence to support the Full Commission's opinion and award.

I. Factual and Procedural History

Plaintiff has been employed by FedEx for approximately twenty-two years. On 18 May 2017, Plaintiff allegedly injured both shoulders, his neck, and right knee while attempting to pull up a heavy garage door that jammed. The day of the injury, at the direction of FedEx, Plaintiff obtained medical treatment at Arrowood Medical Clinic where he was diagnosed with unspecified muscle strain of the right arm and muscle spasms. He was restricted from working with his right arm. On 22 May 2017, Plaintiff's restrictions were lifted after a follow-up appointment.

Two days later, FedEx filed Form 19, *Employer's Report of Employee's Injury to the Industrial Commission*, stating that Plaintiff injured his "shoulder(s)." On 4 January 2018, Plaintiff filed a Form 18, *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, stating he injured his right shoulder on 18 May 2017. In 2018, Defendant testified before Deputy Commissioner Tillman that he injured both shoulders in the May 2017 accident. On 7 August 2018, Plaintiff amended the Form 18 to reflect a left shoulder injury. On 18 December 2018, Plaintiff presented to Dr. Dana Piasecki for a second opinion on his right shoulder injury and reported issues with his left shoulder. Dr. Piasecki noted, "work-related right

shoulder complaints [occurring] in the context of neck and bilateral shoulder pain as well as reported numbness . . . involving both hands[.]”

On 18 February 2019, in a consent order authorized by the Commission, FedEx agreed to the compensability of Plaintiff’s right-shoulder injury and designated Dr. Piasecki as the authorized treating physician for the injury. In April 2019, Dr. Piasecki noted that Plaintiff’s left shoulder complaints were consistent with rotator cuff bursitis and likely resulted from compensating for his right shoulder injury. By December 2019, Plaintiff complained more of his left shoulder pain than his right. Defendants requested Plaintiff obtain an independent medical examination. At this examination, Dr. Jonathan Paul diagnosed Plaintiff with bilateral shoulder injuries stemming from his 2017 injury. In May 2020, Dr. Piasecki recommended shoulder surgery for Plaintiff’s left shoulder. In June 2020, Dr. Piasecki performed this surgery which Plaintiff paid for out-of-pocket because Defendants contested the compensability of the injury. Plaintiff returned to work after the surgery on 14 September 2020.

On 22 December 2020, Deputy Commissioner Mary Claire Brown held a hearing on the compensability of Plaintiff’s left shoulder injury. Plaintiff’s claim was denied. Plaintiff timely appealed to the Full Commission which found in his favor. Defendants timely appealed the Full Commission’s opinion and award.

II. Analysis

Defendants contend Dr. Piasecki's testimony is incompetent to show medical causation because the testimony was based on a hypothetical and was equivocal. Specifically, Defendants challenge the Full Commission's Findings of Fact 38 and 39:

38. Dr. Piasecki testified to a reasonable degree of medical certainty that Plaintiff's left shoulder condition, and resulting surgery, were the result of the accident on May 18, 2017. He explained that the condition he treated Plaintiff for and the surgery was "one of irritation and chronic irritation of the rotator cuff, symptomatic arthritis of the AC joint biceps tendonitis, and impingement in general, are conditions that frequently follow injuries and subsequent muscle imbalance around the shoulder joint." He went on to add that the "condition is one that is common to extend for a long period of time after an injury . . . one that frequently is overshadowed by other pathologic conditions that receive treatment, and it fits his story of the mechanism of injury and the continued symptoms he reported afterwards.["]

39. While Dr. Piasecki originally believed Plaintiff's left shoulder condition was compensatory for the right shoulder, as Plaintiff was

"predominantly presenting with right shoulder issues at the time." Dr. Piasecki testified that his prior belief would not exclude "longstanding symptoms related to prior injury." He added,

[s]o my best guess, and again this is a combination of history and what we saw at the time of surgery, is that he had a longstanding issue in the left shoulder that was contributed to, if not produced by, the injury that he had, but it was overshadowed by the other orthopedic issues and exacerbated by them afterwards.

Defendants argue Dr. Piasecki's testimony, upon which the Commission based their Findings of Fact, was insufficient to support their Conclusion of Law 3:

3. [] In the present matter, Plaintiff presented competent expert medical testimony through Dr. Piasecki that his left shoulder injury and subsequent need for left shoulder surgery were caused by his work-related accident of May 18, 2017. Accordingly, Plaintiff has met his burden of proving a causal relationship between his left shoulder condition and the accident.

Under the Workers' Compensation Act, the Industrial Commission, as the fact-finding body, "is the sole judge of the credibility of the witnesses and the weight to be given their testimony[.]" *Sprouse v. Mary B. Turner Trucking Co., LLC.*, 384 N.C. 635, 642–43, 887 S.E.2d 699, 706 (2023) (citation and quotation marks omitted). An award of the Commission "shall be conclusive and binding as to all questions of fact[.]" N.C. Gen. Stat. § 97-86 (2023). An appellate court reviewing an award of the Industrial Commission "does 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. Lincoln Const. Co.*, 256 N.C. 431, 434, 144 S.E.2d 272, 274 (1965) (citing *Brice v. Robertson House Moving, Wrecking and Salvage Co.*, 249 N.C. 74, 83, 105 S.E.2d 439, 446 (1958)).

Our review is limited to: "(1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Hassell v. Onslow County Bd. Of Educ.*, 362 N.C. 299, 305, 661

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S.E.2d 709, 714 (2008) (quoting *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492 (2005)). “[I]f the totality of the evidence, viewed in the light most favorable to the complainant, tends directly or by reasonable inference to support the Commission’s findings, these findings are conclusive on appeal even though there may be plenary evidence to support findings to the contrary.” *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 166, 265 S.E.2d 389, 390–91 (1980) (citations omitted).

A worker’s injury “is compensable when it is (1) by accident, (2) arising out of employment, and (3) in the course of employment.” *Sprouse*, 384 N.C. at 643, 887 S.E.2d at 707 (citations and quotation marks omitted). When cases involve “complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of injury.” *Holly v. ACTS, Inc.*, 357 N.C. 228, 232, 581 S.E.2d 750, 753 (2003) (quoting *Click*, 300 N.C. at 167, 265 S.E.2d at 391). Expert testimony must not be “based merely upon speculation and conjecture,” rather, the testimony “must be sufficient competent evidence tending to show a proximate causal relation.” *Id.* (citations and quotation marks omitted).

Here, even assuming Dr. Piasecki’s deposition testimony was insufficient to support the Commission’s conclusion of law finding causation, there is still competent evidence to support a causal relationship. The Commission “assigned more weight to the opinions of Dr. Piasecki than the opinions of Dr. Paul because Dr. Piasecki was designated as Plaintiff’s authorized treating physician for his compensable injuries,

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and has treated Plaintiff for his left shoulder injury.” Dr. Piasecki unequivocally stated his opinion that the 18 May 2017 injury caused Plaintiff’s left shoulder injury in a letter to Plaintiff’s counsel. Counsel’s letter inquired “[d]o you have an opinion satisfactory to yourself and to a reasonable degree of medical certainty as to whether it is more likely than not that [Plaintiff’s] left shoulder condition was proximately caused by his accident on May 18, 2017?” Dr. Piasecki checked “Yes.”

At his April 2021 deposition, when questioned about whether Plaintiff’s left shoulder injury was “causally related to the May 18th, 2017, work injury[,]” Dr. Paul testified that he did not think it was. However, on 19 May 2020, when Plaintiff received an independent medical examination from Dr. Paul at the direction of Defendants, he diagnosed Plaintiff with “bilateral AC joint sprains from 2017 WC injury.” Moreover, Dr. Paul stated that “[b]ased upon the available information, to a reasonable degree of medical certainty, there is a causal relationship between the [Plaintiff]’s current condition and the reported injury.” The Commission had both Dr. Paul’s previous report containing his prior diagnosis and opinion as well as his testimony walking back his previous statements when deciding the matter. Thus, the Commission was best suited to weigh the evidence and ultimately did so in favor of Plaintiff.

The Commission received evidence by two medical experts tending to show that Plaintiff’s injury to his left shoulder was caused by the 18 May 2017 accident. Finding of Fact 38 is supported by competent evidence in the form of Exhibit 1 to Dr.

Piasecki's 11 March 2021 deposition and by Dr. Paul's diagnosis. Thus, Finding of Fact 38 justifies Conclusion of Law 3 that Plaintiff carried his burden of proving causation. Accordingly, Defendants failed to show there is no evidence supporting the Commission's finding of fact on causation which in turn supports the Commission's conclusion of law.

III. Conclusion

For the aforementioned reasons, the North Carolina Industrial Commission did not err in finding causation between the 18 May 2017 accident and Plaintiff's left shoulder injury.

AFFIRMED.

Judges STROUD and THOMPSON concur.

Report per Rule 30(e).