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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-843

Filed 7 May 2024

North Carolina Industrial Commission, I.C. No. 20-747132

ROGER W. HANSON, Employee, Plaintiff,

v.

MARTEN TRANSPORT, LTD., Employer, SELF-INSURED (SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., Third-Party Administrator), Defendant.

Appeal by plaintiff from opinion and award entered 27 June 2023 by the North Carolina Industrial Commission. Heard in the Court of Appeals 20 February 2024.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for plaintiff-appellant.

McAngus, Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal and Jason Toups, for defendant-appellee.

ZACHARY, Judge.

Plaintiff Roger W. Hanson appeals from the opinion and award entered by the Full North Carolina Industrial Commission denying his claim for benefits. After careful review, we affirm.

I. Background

Before being employed by Defendant Marten Transport, Ltd., Plaintiff had

undergone multiple surgeries on his knees and back as a result of a series of work-related accidents. In October 2018, Plaintiff began medical treatment at Solas Health for chronic pain in his neck, lower back, and left knee. Among other concerns, Plaintiff complained of moderate to severe lower back pain that radiated into both of his legs.

On 15 January 2019, Plaintiff underwent back surgery. Over the next ten months, he continued to report pain radiating down both legs. In November 2019, Plaintiff was approved to return to work with no restrictions. Plaintiff continued to receive pain treatment at Solas Health throughout 2020.

In June 2020, Plaintiff began working as a truck driver for Defendant. On the afternoon of 13 October 2020, Plaintiff presented at Solas Health with a complaint of acute pain in his "left hip, left buttock, [and] left groin" that was "moderate to severe in intensity[,]" "aggravated by physical activity[,]" and "relieved by nothing." The physician assistant who treated Plaintiff that day entered an order for bilateral x-rays of Plaintiff's hips and pelvis.

On the evening of 13 October 2020, as Plaintiff was attempting to untangle his truck's air lines, he slipped on mud, fell off the elevated platform on which he was standing, and tangled his leg in the platform's steps.[1] At the emergency department in the early morning of 14 October, hospital staff took x-rays of Plaintiff's left hip and

[1] There were no witnesses to this incident, and in the proceedings below Defendant disputed the credibility of Plaintiff's report of his injury. As explained herein, the Full Commission assumed, *arguendo*, that the accident occurred as Plaintiff described. Accordingly, so do we.

knee, which showed no fractures. The emergency department physician treated Plaintiff for a lumbar sprain, contusion of the hip and thigh, and traumatic bursitis of the left knee.

On 18 October 2020, Plaintiff filed a Form 18 notice of accident and workers' compensation claim with the North Carolina Industrial Commission, asserting that he suffered a shattered pelvis and injuries to "multiple body parts[,]" including his hip, back, legs, and knees. On 18 November 2020, Defendant filed a Form 61 denying Plaintiff's claim. Defendant alleged that Plaintiff's report was not credible, that his alleged injuries preexisted his claim, and that he materially misrepresented his physical condition during the hiring process.

On 9 February 2021, Plaintiff presented to Dr. David Jones, an orthopedic surgeon, and reported not having significant left hip pain before his fall. After conducting diagnostic imaging, Dr. Jones noted that Plaintiff "most likely has labral pathology from a femoroacetabular impingement [("FAI")] and a traumatic injury - complicated by underlying spine issues." On 1 March 2021, Dr. Jones performed a diagnostic arthroscopy of Plaintiff's left hip and, in his postoperative diagnosis, added that Plaintiff's left hip contained "extensive arthritic changes[.]"

Dr. Jones testified in his deposition that while he believed that Plaintiff's fall on 13 October did not cause his FAI, it "could have potentially caused more damage to the labrum, increasing [Plaintiff's] pain to the point where he noticed it[.]" Therefore, based on Plaintiff's self-reported claim that he did not have significant left

hip pain before his fall, Dr. Jones opined that he believed Plaintiff's fall materially exacerbated his FAI.

Dr. Chad Fortun, an expert in orthopedic surgery hired by Defendant, reviewed Plaintiff's medical records and opined on the cause of Plaintiff's left hip pain. Dr. Fortun testified that an FAI from an anatomic deformity likely caused his labral tear. In explaining the basis of his opinion, Dr. Fortun testified that Plaintiff's medical records indicate that his left hip has a "chronic, degenerative condition" and that Plaintiff experienced left hip pain before his fall on 13 October. While Dr. Fortun testified that Plaintiff's fall could have exacerbated his symptoms, he could not state whether such an exacerbation would be material.

On 26 May and 2 July 2021, the matter came on for hearing before Deputy Commissioner Kevin Howell. On 26 October 2022, the Deputy Commissioner entered an Opinion and Award denying Plaintiff's claim. The Deputy Commissioner concluded that Plaintiff had not proved that he "suffered a compensable left hip injury" and that, alternatively, the claim was barred by N.C. Gen. Stat. § 97-12.1 because Plaintiff had made material misrepresentations to his employer regarding his physical condition during the hiring process with his employer.

Plaintiff timely appealed to the full North Carolina Industrial Commission ("the Full Commission"). On 16 March 2023, the matter came on for hearing before the Full Commission. On 27 June 2023, the Full Commission entered its Opinion and Award, denying Plaintiff's claim. For the purpose of its analysis, the Full Commission

assumed that "Plaintiff fell in the manner alleged during his hearing[,]" but still concluded that Plaintiff "failed to present competent and credible medical evidence that such a fall caused his left hip condition or aggravated his preexisting left hip condition[.]"

In particular, the Full Commission found Dr. Fortun's opinion to be "competent and credible" but assigned Dr. Jones's testimony "no weight" because it "reli[ed] on Plaintiff's assertion that he had no significant left hip pain prior to [his fall on 13 October]." Regarding Plaintiff's assertion, the Commission noted that "earlier on the day of [13 October], he specifically reported acute and increasing, moderate to severe, aching and sharp, left hip pain—including pain in his left groin—to his pain management provider, for which the provider ordered x-rays." Accordingly, in that "Plaintiff has failed to present competent and credible medical evidence linking his left hip condition to his fall on 13 October 2020," the Full Commission concluded that "Plaintiff has failed to meet his burden to establish a compensable injury by accident to his left hip."

On 28 June 2023, Plaintiff filed timely notice of appeal to this Court.

II. Discussion

Plaintiff argues that the Full Commission committed reversible error (1) "when it failed to find as fact and conclude as a matter of law that [Plaintiff] was involved in an accident on 13 October 2020," and (2) "when it concluded as a matter of law that [Plaintiff] did not sustain any injury to his left hip or materially aggravate his

preexisting degenerative left hip condition and/or his left hip labral tear as a result of his accident at work on 13 October 2020[.]" We disagree.

A. Standard of Review

"Appellate review of an Industrial Commission order is limited to reviewing whether any competent evidence supports the [Full] Commission's findings of fact and whether the findings of fact support the [Full] Commission's conclusions of law." *Hill v. Fed. Express Corp.*, 234 N.C. App. 488, 490, 760 S.E.2d 70, 73 (2014) (cleaned up). "The findings of fact by the Industrial Commission are conclusive on appeal if supported by any competent evidence." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (citation omitted), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). Thus, an appellate 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.* (citation omitted).

Further, the Full Commission has the "sole responsibility for evaluating the weight and credibility to be given to the record evidence. Findings that are not challenged on appeal are presumed to be supported by competent evidence and are conclusively established on appeal." *Hill*, 234 N.C. App. at 490, 760 S.E.2d at 73 (cleaned up). We review de novo the Full Commission's conclusions of law. *Id.*

B. Discussion

1. The Accident

Plaintiff first challenges the Full Commission's "findings of fact as to whether there was an accident," and alleges that the Full Commission "improperly cast[ ] doubt on whether [Plaintiff] was involved in an accident at all." However, this argument arises from an apparent misapprehension of the Full Commission's Opinion and Award.

In its Opinion and Award, the Full Commission assumed for the sake of argument that "Plaintiff fell in the manner alleged during his hearing" and then concluded that "even assuming that Plaintiff fell at work on 13 October 2020, . . . Plaintiff has failed to present competent and credible medical evidence that such a fall caused his left hip condition or aggravated his preexisting left hip condition[.]" Contrary to Plaintiff's assertion, at no point did the Full Commission "find as fact [or] conclude as a matter of law[ ] that [Plaintiff] was not involved in an accident on 13 October 2020[.]"

Plaintiff does not challenge the evidence underlying any of the Full Commission's findings of fact concerning whether there was an accident; the only specific finding of fact that Plaintiff challenges is the finding in which the Full Commission recited Plaintiff's testimony describing the accident. However, as Plaintiff correctly observes, "[t]he Industrial Commission frequently couches its findings of fact in the form of recitations of testimony without declaring whether it finds the testimony to be a fact." *Peoples v. Cone Mills Corp.*, 316 N.C. 426, 442 n.7, 342 S.E.2d 798, 808 n.7 (1986).

Rather, Plaintiff contends that the Full Commission committed reversible "clear error" because it "intentionally failed to make findings of fact as to whether [Plaintiff] was involved in an accident." (Emphasis omitted). However, this argument is unavailing because the Full Commission assumed, *arguendo*, that an accident occurred "in the manner [that Plaintiff] alleged during his hearing testimony" and yet concluded nevertheless that Plaintiff had not carried his burden to "prove a causal relationship between that event and the condition for which he seeks compensation." Plaintiff cannot show any merit to this asserted ground for reversal; even if the Full Commission had made precisely the findings that Plaintiff claims it erroneously failed to make, such findings would not affect the Full Commission's conclusions of law in any way.

The Full Commission did not err by assuming for the sake of its analysis that an accident occurred without making an affirmative finding of fact to that effect. Plaintiff's argument is overruled.

2. Causation

Plaintiff next argues that the Full Commission erred by concluding that he "failed to present competent and credible medical evidence that such a fall caused his left hip condition or aggravated his preexisting left hip condition" and "more specifically," by concluding that "the medical evidence is insufficient to establish a fall on 13 October 2020 caused the left hip labral tear for which Plaintiff has undergone surgery."

"In a worker's compensation claim, the employee has the burden of proving that his claim is compensable. An injury is compensable as employment-related if any reasonable relationship to employment exists." *Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003) (cleaned up). "Although the employment-related accident need not be the sole causative force to render an injury compensable, the plaintiff must prove that the accident was a causal factor by a preponderance of the evidence . . . ." *Id.* at 231–32, 581 S.E.2d at 752 (cleaned up).

"In cases involving 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 the injury." *Id.* at 232, 581 S.E.2d at 753 (cleaned up). "However, when such expert opinion testimony is based merely upon speculation and conjecture, it is not sufficiently reliable to qualify as competent evidence on issues of medical causation." *Id.* (cleaned up).

In the case before us, Plaintiff contends that Dr. Jones "provided the requisite expert medical opinion testimony establishing causation." Plaintiff further alleges that the Full Commission "grossly mischaracterize[d] the testimony of Dr. Jones, the treating physician, and Dr. Fortun, the defense expert who solely did a medical record review." Despite acknowledging that the Full Commission "is free to make credibility determinations," Plaintiff argues that "it is not free to misrepresent the testimony of the medical experts."

Indeed, as stated above, the Full Commission has the "sole responsibility for

evaluating the weight and credibility to be given to the record evidence." *Hill*, 234 N.C. App. at 490, 760 S.E.2d at 73. And here, the Full Commission made the following findings regarding the credibility of these experts:

> Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that, assuming Plaintiff fell in the manner alleged during his hearing testimony on 26 May 2021, he did not sustain an injury to his left hip. In reaching this finding, the Full Commission finds Dr. Fortun's opinion competent and credible that Plaintiff's left hip condition—[FAI] resulting in a labral tear—was degenerative in nature and could not have been caused by a fall on 13 October 2020. Further, *the Full Commission assigns no weight to Dr. Jones'*[*s*] *opinion* that Plaintiff sustained a material aggravation of his preexisting degenerative left hip condition as a result of a fall on 13 October 2020, *as such an opinion was based on Dr. Jones'*[*s*] *reliance on Plaintiff's assertion that he had no significant left hip pain prior to the fall. The Full Commission does not find Plaintiff's testimony or assertions to his providers—including Dr. Jones—that he was not experiencing severe left hip pain before his fall on 13 October 2020 to be credible.* The Full Commission notes that earlier on the day of Plaintiff's fall, he specifically reported acute and increasing, moderate to severe, aching and sharp, left hip pain—including pain in his left groin—to a pain management provider, for which the provider ordered x-rays. *The Full Commission assigns more weight to Plaintiff's 13 October 2020 medical record than his assertions regarding the condition of his left hip prior to his fall.*

(Emphases added). The Full Commission plainly found that Plaintiff's assertions to Dr. Jones and upon which Dr. Jones relied were not credible, thus tainting the credibility of Dr. Jones's testimony.

In challenging this finding, Plaintiff asserts that "Dr. Jones testified within a

reasonable degree of medical certainty that the accident significantly exacerbated the pre-existing FAI, based upon his education, his training, his clinical experience, and the medical literature" and that "Dr. Jones testified that no questions by defense counsel changed his medical opinion regarding medical causation of material exacerbation within a reasonable degree of medical certainty."

However, we are bound by the Full Commission's determination that Plaintiff's assertions regarding the pre-fall condition of his hip lacked credibility. *Id.* Therefore, the Full Commission's findings that Dr. Jones's statements were made in reliance upon Plaintiff's non-credible statements are supported by competent evidence in the record. For example, Dr. Jones acknowledged in his deposition that his "opinion is that [Plaintiff's hip condition] was exacerbated *based upon what* . . . [*Plaintiff*] *has told me*." (Emphasis added). As competent evidence supports the Full Commission's finding that Dr Jones's "opinion was based on [his] reliance on Plaintiff's assertion that he had no significant left hip pain prior to the fall[,]" this finding is conclusive on appeal. *See id.*

Plaintiff further "submits that whether he experienced left hip and groin pain prior to his accident is irrelevant, in that the FAI was a pre-existing, non-disabling condition." To support this point, Plaintiff alleges that "Dr. Jones testified that even if [Plaintiff] reported left hip and groin pain prior to the date of his accident, it would not change [Dr. Jones's] opinion that the slip and fall materially exacerbated [Plaintiff's] underlying left hip condition."

Although Dr. Jones testified that his opinion would be unchanged even if Plaintiff were experiencing pain prior to the accident, his answer was much more equivocal—and much more reliant upon Plaintiff's self-reported experience—than Plaintiff acknowledges:

> The reason I answer that is this is a typical presentation of groin pain from someone who would have an impingement. *What I can't ascertain from this note compared to when I saw him is how much more pain he was in after the fall. And I have no way to tell that*. But in someone with his particular clinical situation, the pain I'm seeing in this note, the one from the telehealth visit that you've given me to review, would be very typical for impingement of the hip, FAI, *but I have no way to tell whether the fall made his pain worse or it was simply the same thereafter. So based upon his recollection, his report to me,* I would still opine that he had exacerbation of an underlying condition.

(Emphases added). Instead of undermining the Full Commission's characterization of Dr. Jones's testimony, this provides further competent evidence to support the Full Commission's findings and conclusions.

To the extent that Plaintiff asks us to re-weigh the evidence before the Full Commission in challenging its findings regarding Dr. Jones's testimony, we reiterate that our "duty goes no further than to determine whether the record contains any evidence tending to support the finding[s]." *Adams*, 349 N.C. at 681, 509 S.E.2d at 414 (1998) (citation omitted). Because "competent evidence supports the [Full] Commission's findings of fact and . . . the findings of fact support the [Full] Commission's conclusions of law[,]" *Hill*, 234 N.C. App. at 490, 760 S.E.2d at 73, we

affirm the Full Commission's Opinion and Award.

III. Conclusion

For the foregoing reasons, the Opinion and Award of the Full Commission is affirmed.

AFFIRMED.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).