NO. COA02-628

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

ROBBY TYSON GOODMAN,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 008311

MOUNTAIRE FARMS OF N.C.,
Employer,

AIG CLAIMS SERVICE,
Carrier,
Defendants.

Appeal by defendants from opinion and award filed 18 February 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 December 2002.

MacRae, Perry, Williford, MacRae & Hollers, by Daniel T. Perry, III for plaintiff appellee.

Cranfill, Sumner & Hartzog, L.L.P., by Jaye E. Bingham, for defendant appellants.

GREENE, Judge.

Mountaire Farms of N.C. (Defendant-Employer) and AIG Claims Service (collectively, Defendants) appeal an opinion and award of the Full Commission of the North Carolina Industrial Commission filed 18 February 2002 awarding Robby Tyson Goodman (Plaintiff) workers' compensation for his injury by accident.

This action arises out of a 6 January 2000 motor vehicle accident in which Plaintiff was seriously injured. After Defendants denied Plaintiff's claim for workers' compensation benefits, Plaintiff requested a hearing before the North Carolina Industrial Commission. This matter was initially heard by Deputy Commissioner Amy L. Pfeiffer on 30 August 2000.

At the hearing, Plaintiff presented evidence tending to show he had worked for Defendant-Employer, initially as a truck driver, transporting poultry from the company's farms to the plant, and later as a forklift driver, loading trucks with cages of live chickens for transport to the plant. Plaintiff was an extremely reliable and valuable employee, and when his own truck was stolen during the first week in January 2000, his supervisor, Richard Evans (Evans), gave Plaintiff a company van for transportation to and from work.

On 4 January 2000, the team of chicken catchers supervised by Richard Williams (Williams) was short staffed. Other personnel, including administrative staff, filled in to assist in catching chickens in the various chicken houses to keep the plant running. After receiving permission from his supervisor and Williams, Plaintiff brought his brother-in-law, Felipe Ramirez (Ramirez), to assist in catching chickens on 5 January 2000. Plaintiff was subsequently instructed by Evans to bring Ramirez and the van back at 2:00 a.m. the next morning "so [he could] get [Ramirez] back to . . . Williams' crew." Plaintiff did not normally start work until 5:00 a.m.

On January 6, Plaintiff left his residence and picked Ramirez up at around 1:20 a.m. While en route to Defendant-Employer's plant, Plaintiff was involved in an accident causing him serious bodily injury. Plaintiff required elaborate surgery and, at the time of the hearing on this matter, had not returned to work. As of the 26 October 2000 deposition of his treating neurosurgeon, Plaintiff had not reached maximum medical improvement.

Defendants offered the testimony of Evans, who stated he had never told Plaintiff to bring his brother-in-law to the plant. Evans explained Plaintiff had been driving the van to the plant on the morning of the accident to meet another employee, Aaron Maness (Maness), so Maness could use the van to take employees out to the farm to assist Williams' chicken catcher crew. Evans further testified: "[G]iving [Plaintiff] the van was never intended to go pick up anyone. [The van was] [m]erely for him to get back and forth to the plant." Evans insisted he never had a conversation with Plaintiff about bringing anyone with him to work and had no knowledge of anyone calling Plaintiff in this regard.

Davis Wilson (Wilson), a former manager with Defendant-Employer, also testified for Defendants. Contrary to Plaintiff's testimony that Wilson was present and heard Evans tell Plaintiff to bring Ramirez to work on the morning of January 6, Wilson denied ever hearing such a statement. Wilson did, however, remember that Plaintiff was going to drive the van to the plant on the morning of January 6, where Maness would be waiting to get the van and pick up any workers who would be needed to assist Williams' chicken catchers.

Finally, Maness testified he had spoken with Evans on the night of January 5 and was told Plaintiff would bring him the van on the morning of January 6. Maness also heard Evans and Plaintiff discuss the fact that Plaintiff needed to be at the plant at 2:00 a.m. on January 6. Maness explained he then waited for Plaintiff to bring the van to the plant on the morning of January 6. When Plaintiff did not show up by 3:00 or 4:00 a.m., Maness had one of the truck drivers who came by the plant take four workers to the farm to assist with catching chickens.

After reviewing the evidence of record, the deputy commissioner concluded Plaintiff had suffered a compensable injury as a result of the 6 January 2000 vehicle accident and awarded Plaintiff temporary total disability benefits. Defendants appealed to the Full Commission, and the

Full Commission, "with some minor modifications," affirmed and adopted the opinion and award of the deputy commissioner. In doing so, the Full Commission made the following findings pertinent to this appeal:

> 1. Plaintiff was hired in April 1999 by [D]efendant-[E]mployer as a truck driver transporting poultry to [D]efendant-[E]mployer's plants. However, [P]laintiff, who was a good and valuable employee, later began driving a forklift. . . . Plaintiff generally reported to work at 5:00 a.m. each morning.
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> 2. Plaintiff's personal vehicle was stolen in early January 2000. As a courtesy to [P]laintiff, and so he would have transportation to and from work, [D]efendant-[E]mployer temporarily allowed [P]laintiff to use the company van. Defendant-[E]mployer did not have a contractual obligation to provide [P]laintiff with transportation.
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> 3. As part of [D]efendant-[E]mployer's business, contract employees were used as chicken catchers. . . . Generally there were about nine chicken catchers per crew. However, in early January 2000, one of the crews was extremely short-handed . . . . Due to the shortage of catchers, on 5 January 2000 [P]laintiff brought his brother-in-law, . . . Ramirez, to work as a chicken catcher. Prior to 5 January 2000, . . . Ramirez had not worked as a contract chicken catcher for [D]efendants.
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> 4. After the shift was completed on 5 January 2000, . . . Williams, one of the chicken catcher crew leaders, talked to [P]laintiff and . . . Ramirez and asked that . . . Ramirez return the following day to continue assisting the crew in catching chickens. [Ramirez] agreed to return, and . . . Williams told [P]laintiff to make sure that . . . Evans, [D]efendant-[E]mployer's live haul manager, approved . . . Ramirez's return to work the next day. Plaintiff talked to . . . Evans, who indicated that it was fine for . . . Ramirez to return the next day as a chicken catcher.
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> 5. There is some dispute in the evidence regarding what [P]laintiff was told about . . . Ramirez's return the following day. Plaintiff testified, and . . . Ramirez corroborated, that . . . Evans specifically asked [P]laintiff to transport . . . Ramirez to the plant the following morning at 2:00 a.m. [Evans] denies that he told [P]laintiff to drive . . . Ramirez to the plant the next day.

> 6. Plaintiff was instructed by . . . Maness, another live haul manager for [D]efendants, to bring the company van to the plant by 2:00 a.m. on 6 January 2000. Defendants needed the van to transport the crew of chicken catchers to the farm that morning. . . .
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> 7. According to telephone records admitted into evidence, on the evening of 5 January 2000 a telephone call from the premises of [D]efendant-[E]mployer was placed to [P]laintiff's mother's house, where [P]laintiff was staying. Plaintiff testified that this telephone call was made to remind [P]laintiff to transport . . . Ramirez to the plant the following day at 2:00 a.m. Whether [P]laintiff was told in the course of this telephone call to bring . . . Ramirez to work the next day at 2:00 a.m. or whether the purpose of this call was to remind [P]laintiff that he must bring the company van to the plant the next day at 2:00 a.m. is irrelevant; it is clear from the competent, credible evidence of record that [P]laintiff was instructed by [D]efendants to report to the plant at 2:00 a.m. on 6 January 2000, when he normally did not report to work until 5:00 a.m. Plaintiff's drive to work on the morning of 6 January 2000, therefore, in which he both had to return the company van and transport an employee, constituted a special errand assigned by [D]efendants.

The Full Commission then concluded:

> 1. In order for an injury occurring while an employee is traveling to or from work to be compensable, an exception to the coming and going rule must apply. One such exception involves the situation in which an employee is injured while on a "special errant" or while performing a duty or mission assigned by the employer. *Powers v. Lady's Funeral Home*, 306 N.C. 728, 295 S.E.2d 473 (1982). Plaintiff herein suffered an injury by accident as defined in the Act. N.C. Gen. Stat. §97-2(6). Because [P]laintiff was on a special errand of his employer in that he had to bring the company van back to the employer at a particular time that was not his normal work time and to transport a necessary worker, the injury by accident arose out of his employment. *Powers*, *supra*. Additionally, [P]laintiff's injury by accident occurred in the course of his employment because it occurred under circumstances in which [P]laintiff was engaged in an activity that he was authorized to [under]take and that was calculated, even if indirectly, to further the employer's business. *Powers, supra*; *see also Clark v. Burton Lines*, 272 N.C. 433, 158 S.E.2d 569 (1972). Accordingly, on 6 January 2000[, P]laintiff sustained a compensable injury by

> accident arising out of and in the course of his employment. N.C. Gen. Stat. §97-2(6).

The dispositive issue is whether Plaintiff's injuries arose out of and in the scope of his employment.

This Court's review of an opinion and award by the Full Commission is limited to a determination of whether: (1) the findings are supported by any competent evidence and (2) the Full Commission's conclusions are supported by its findings. *Demery v. Perdue Farms, Inc.*, 143 N.C. App. 259, 264, 545 S.E.2d 485, 489, *aff'd*, 354 N.C. 355, 554 S.E.2d 337 (2001). It is well-settled that the Full Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Lineback v. Wake County Bd. of Comm'rs*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997). Accordingly, if there is any competent evidence to support a finding of fact, such a finding is binding and conclusive on appeal even if there is other evidence that would support a finding to the contrary. *Id*.

Defendants argue Plaintiff's injuries did not arise out of and in the scope of his employment as required under the Worker's Compensation Act. *See Royster v. Culp, Inc.*, 343 N.C. 279, 281, 470 S.E.2d 30, 31 (1996). "As a general rule 'an injury suffered by an employee while going to or coming from work is not an injury arising out of and in the course of employment,'" *Kirk v. State of N.C. Dept. of Correction*, 121 N.C. App. 129, 131, 465 S.E.2d 301, 303 (1995) (citation omitted); however, "[u]nder the 'special errand' exception, an injury caused by a highway accident is compensable if the employee at the time of the accident is acting in the course of his employment and in the performance of some duty, errand, or mission thereto," *Royster*, 343 N.C. at 283, 470 S.E.2d at 32. In *Powers v. Lady's Funeral Home*, our Supreme Court explained:

> A claimant is injured in the course of employment when the injury occurs during the period of employment at a place where an employee's duties are calculated to take him, and under circumstances in which the employee is engaged in an activity which he is authorized to undertake and which is calculated to further, directly or indirectly, the employer's business.

Powers v. Lady's Funeral Home, 306 N.C. 728, 730, 295 S.E.2d 473, 475 (1982). "Whether there was a special errand and when the errand began and ended is a question of fact and is to be determined on a case-by-case basis." *Osmond v. Carolina Concrete Specialities*, --- N.C. App. ---, ---, 568 S.E.2d 204, 207 (2002).

In this case, Plaintiff testified he had been instructed to transport Ramirez to work on the morning of 6 January 2000. Another witness testified to hearing Evans and Wilson, agents of Defendant-Employer, assure Plaintiff after the accident that he did not need to worry because they had instructed him to pick up Ramirez on the morning of January 6. Moreover, the evidence is uncontroverted that Plaintiff was instructed to return the company van to Defendant-Employer's plant at 2:00 a.m. on January 6, some three hours earlier than the start of his usual workday. While Defendants presented evidence refuting Plaintiff's evidence regarding Evans' instruction to pick up Ramirez, the Full Commission, as the finder of fact, was free and indeed had a duty to resolve this conflict. *See Lineback*, 126 N.C. App. at 680, 486S.E.2d at 254. Here, the Full Commission found Plaintiff's evidence to be more credible and resolved the factual conflict in his favor. As there was competent evidence to support the Full Commission's finding that Plaintiff was engaged in a special errand for Defendant-Employer when he was injured in the accident, this finding is binding upon this Court. Furthermore, because the Full Commission's finding supports its conclusion that Plaintiff sustained a compensable injury by accident arising out of and in the course of his employment, there was no error. Accordingly, we

hold the Full Commission properly awarded Plaintiff temporary total disability benefits under the Workers' Compensation Act.

Affirmed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).