NO. COA11-602
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

JAY GRUNDMEYER, Employee,
Plaintiff,

v. North Carolina Industrial Commission
I.C. No. 886709

CORN PRODUCTS INTERNATIONAL, INC., Employer; and TRAVELERS INSURANCE CO., Carrier,
Defendants.

Appeal by Defendants from opinion and award entered 2 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 November 2011.

Daniel S. Walden, for Plaintiff-appellee.

Orbock Ruark & Dillard, PC, by Barbara E. Ruark, for Defendants-appellants.

HUNTER, JR., Robert N., Judge.

Jay Grundmeyer ("Plaintiff") worked for Corn Products International ("CPI") ("Defendant-employer"), which was insured by Travelers Insurance Company ("Travelers") ("Defendant-carrier"). Plaintiff filed an occupational disease claim with Defendant-carrier, requesting to recover benefits because of a

disease he claimed to have developed as a consequence of his duties at CPI. Defendant-carrier denied Plaintiff's claim. On 4 February 2009, Plaintiff filed a Form 33 with the Industrial Commission (the "Commission"). Deputy Commissioner Robert J. Harris heard Plaintiff's claim on 19 November 2009 in Winston-Salem. On 9 July 2010, Deputy Commissioner Harris filed an opinion and award denying Plaintiff's claim, holding that Plaintiff did not show by the greater weight of the evidence that his job duties (1) were a significant contributing factor in his development of tenosynovitis or (2) placed him at a greater risk for developing tendonosis or peroneus tendon ruptures and/or tears than the general population. On 12 July 2010, Plaintiff gave notice of appeal to the Full Commission. The Full Commission reviewed the case on 7 December 2010 and entered an opinion and award on 2 March 2011, reversing the decision of Deputy Commissioner Harris and finding in favor of Plaintiff. The Commission additionally awarded Plaintiff medical treatment reasonably related to his occupational diseases and temporary total disability compensation in the weekly amount of $786.00 from 4 April 2008 until further ordered by the Commission. Defendants entered timely notice of appeal on 28 March 2011. For the following reasons, we affirm in part,

reverse in part, and remand for further proceedings consistent with this opinion.

I. Factual Background

Plaintiff was 63 years old at the time of the hearing before the Commission. Plaintiff began working for Defendant-employer in 1984 as a process/utility operator at Defendant-employer's plant in Winston-Salem, where corn products such as high-fructose corn syrup, cattle feed, and cornstarch are manufactured. Plaintiff worked as both a control room operator and a field room operator, working eight and twelve-hour shifts for each position. Both positions required Plaintiff to operate, maintain, and inspect machinery and boilers to ensure the manufacturing process went smoothly.

When Plaintiff made his rounds in the plant, he frequently knelt down into a position as follows:

> his right knee would touch the floor, and his left knee would be flexed but not touching the floor; the ball of his left foot in his work boot would be touching the floor, and the toes of his left foot would be flexed in his work boot, which would be touching the floor; and his left ankle/heel would be flexed in his work boot and would be about five inches above the floor and located approximately directly below his left buttock.

(hereinafter referred to as the "kneeling position"). In his control operator position, Plaintiff assumed the kneeling position about 58 times per eight-hour shift and about 82 times per twelve-hour shift. In the field operator position, Plaintiff assumed the kneeling position about 70 times per eight-hour shift and about 110 times per twelve-hour shift. Plaintiff estimated he assumed the kneeling position about 230,000 times total over the course of his 23-year career with Defendant-employer.

In 2006, Plaintiff experienced pain in the balls and heels of both of his feet. He sought medical treatment for the pain and got orthotic inserts for his boots. The inserts did not relieve his pain, so he ceased using them after about one month. He continued to have bilateral foot pain that was worse when he was working. However, he did not take off from work despite the pain.

On 13 February 2008 at about 8:30 p.m., Plaintiff was one hour into a twelve-hour shift and was in the kneeling position performing maintenance on a boiler. When he stood up from the kneeling position, he felt a pop in his left foot. Immediate, hot pain spread through his entire left foot and ankle, both of which immediately swelled up. Plaintiff received first aid and

then completed his shift. Thereafter, he continued working on light duty for a time, working on re-writing training manuals with his left foot propped up. Before this incident, Plaintiff never had any major twists or sprains to his left ankle.

Plaintiff saw Dr. D. Scott Biggerstaff, an orthopedic surgeon, on 12 March 2008 regarding the condition of his left foot and ankle. He was diagnosed with peroneus brevis and longus tendon ruptures as well as tenosynovitis in his left foot. Dr. Biggerstaff believed Plaintiff had torn his peroneus tendons in the 13 February 2008 incident. On 20 March 2008, Plaintiff underwent an MRI of his left foot, which confirmed that he had a rupture of the peroneus longus tendon along the plantar surface of the cuboid bone, a tear of the peroneus brevis tendon, and extensive tenosynovitis of both peroneus tendons.

On 24 April 2008, Dr. Biggerstaff performed surgery on Plaintiff's left peroneus longus and brevis tendons. Dr. Biggerstaff was unsuccessful at repairing the peroneus longus tendon. After surgery, Plaintiff developed extreme sensitivity in his left foot. Plaintiff followed up with Dr. Biggerstaff and continued to have pain in his left foot. On 8 June 2009, Dr. Biggerstaff discharged Plaintiff at maximum medical

improvement with a thirty percent permanent partial impairment rating on the left foot. On 9 February 2009, Plaintiff began seeing Dr. David Lee Spivey for pain management. Dr. Spivey diagnosed Plaintiff with complex regional pain syndrome in his left lower extremity below the knee.

As of the hearing before Deputy Commissioner Harris on 19 November 2009, Plaintiff could not stand or walk well because of constant moderate to severe pain in his left foot and lower leg. He used a cane to walk. At home, he spent most of his time in his recliner with his left foot elevated and had swelling in his left foot almost daily. He had trouble sleeping and concentrating due to the pain. The medications Dr. Spivey prescribed Plaintiff helped him only somewhat in easing the pain. Plaintiff has not worked for Defendant-employer or earned any income since 4 April 2008, when Defendant-employer last provided him with sedentary work.

We note the parties entered into the following stipulations before the Full Commission:

> 1. The parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act.
>
> 2. At all relevant times, Plaintiff was an employee of Defendant-Employer.
>
> 3. The carrier on the risk in this claim is

[Travelers].

4. Plaintiff's average weekly wage in this claim is $1,210.95, which yields a compensation rate of $786.00, the maximum for 2008.

5. Plaintiff alleges that by February 13, 2008, he developed or contracted the alleged occupational disease of tenosynovitis caused by trauma in employment of his left foot peroneus brevis tendon and peroneus longus tendon and the occupational diseases of torn or ruptured peroneus brevis tendon and torn or ruptured peroneus longus tendon of his left foot.

6. Plaintiff last worked with Defendant-Employer on or about April 4, 2008.

7. Plaintiff does not seek to be awarded disability compensation for the period from April 5, 2008 through October 7, 2008, when he received short-term disability benefits from Defendant-Employer pursuant to its self-funded plan.

8. Plaintiff does not seek to be awarded medical compensation for treatment of any low back pain complaints or any left L5-S1 radiculopathy pain complaints.

9. Plaintiff does not seek to be awarded any medical compensation for treatment or testing by Dr. Mitchell Isaac.

10. Plaintiff does not seek to be awarded medical compensation for placement of any permanent spinal cord stimulator.

II. Jurisdiction

An opinion and award of the Commission is a final judgment entered upon review of a decision of an administrative agency, and appeal lies to the Court of Appeals pursuant to N.C. Gen. Stat. § 97-86 (2009).

III. Analysis

Defendant argues the Commission erred (1) in finding and concluding Plaintiff suffered from compensable occupational diseases, (2) in failing to make sufficient findings of fact and conclusions of law to establish Plaintiff developed compensable occupational diseases, and (3) in awarding Plaintiff total temporary disability benefits. For the following reasons, we affirm in part, reverse in part, and remand to the Commission for proceedings consistent with this opinion.

A. Compensable Occupational Diseases

Defendant argues the Commission committed reversible error in finding and concluding that Plaintiff suffered from compensable occupational diseases. This Court reviews an opinion and award from the Commission to determine: "'(i) whether the findings of fact are supported by competent evidence, and (ii) whether the conclusions of law are justified by the findings of fact.'" *Johnson v. Covil Corp.*, __ N.C. App.

__, __, 711 S.E.2d 500, 502 (2011) (citation omitted). "Findings of fact made by the Commission are conclusive on appeal when supported by competent evidence, even when there is a conflict in the evidence; however, an exception to a finding of fact not supported by competent evidence must be sustained." *Taylor v. Cone Mills Corp.*, 306 N.C. 314, 320, 293 S.E.2d 189, 193 (1982). "The Commission's conclusions of law are reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004).

Defendant contends there is no competent evidence to show Plaintiff's tenosynovitis was caused by trauma in his employment as is required under N.C. Gen. Stat. § 97-53(21), which enumerates "tenosynovitis, caused by trauma in employment" as an occupational disease. N.C. Gen. Stat. § 97-53(21) (2009). We disagree. "The average layman familiar with the term thinks of trauma as external force or violence which causes an injury, such as a cut, abrasion or contusion, to the outer surface of the body, or the condition produced by such force. However, it has a more comprehensive meaning in the field of medicine." *Henry v. A. C. Lawrence Leather Co.*, 234 N.C. 126, 130, 66 S.E.2d 693, 696 (1951). Strenuous, often repeated, or unaccustomed use of a particular body part can result in

traumatic tenosynovitis. *See id.* (where repeated pulling and stretching of the tendons in the plaintiff's elbows when dipping and loading crops during his shift constituted traumatic tenosynovitis).

Here, competent evidence was presented that Plaintiff, as a control room operator, got into the kneeling position about 58 times during an eight-hour shift and about 82 times during a twelve-hour shift and, as a field operator, got into the kneeling position about 70 times during an eight-hour shift and about 110 times during a twelve-hour shift. In fact, Dr. Biggerstaff testified that the tenosynovitis around Plaintiff's left peroneus longus tendon was more likely than not caused in significant part by the repetitive overuse of Plaintiff getting into and out of the kneeling position over the course of his 23 year employment. Like the plaintiff in *Henry*, we hold Plaintiff's repeated pulling and stretching of his tendons (specifically, his peroneus tendons in his left foot) during his job resulted in traumatic tenosynovitis, an occupational disease under N.C. Gen. Stat. § 97-53(21).

Defendant next contends there is no competent evidence showing that Plaintiff's left peroneus longus tendon rupture and left peroneus brevis tear were occupational diseases within the

meaning of N.C. Gen. Stat. § 97-53(13). "Whether a given illness falls within the general definition of an occupational disease set out in G.S. 97-53(13) is a mixed question of fact and law." *Taylor*, 306 N.C. at 320, 293 S.E.2d at 193. "Mixed questions of law and fact are fully reviewable on appeal." *Id.*

N.C. Gen. Stat. § 97-53 provides:

> The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:
>
> . . . .
>
> (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.

N.C. Gen. Stat. § 97-53 (2009). To prove the existence of an occupational disease within the meaning of this statute, there are three elements the plaintiff must show: (1) the disease must be characteristic of persons engaged in a particular trade or occupation in which the plaintiff is engaged; (2) the disease must not be an ordinary disease of life to which the public is equally exposed; and (3) there must be a causal connection

between the disease and the plaintiff's employment. *Rutledge v. Tultex Corp.*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983).

> To satisfy the first and second elements it is not necessary that the disease originate exclusively from or be unique to the particular trade or occupation in question. . . . [T]he first two elements are satisfied if, as a matter of fact, the employment exposed the worker to a greater risk of contracting the disease than the public generally. The greater risk in such cases provides the nexus between the disease and the employment which makes them an appropriate subject for workmen's compensation.

Id. at 93-94, 301 S.E.2d at 365 (internal citations and quotation marks omitted).

Here, the Commission relied on the competent medical testimony of Dr. Biggerstaff, Plaintiff's treating orthopedic surgeon, in meeting each prong of the *Rutledge* test. Dr. Biggerstaff opined that Plaintiff was placed at a greater risk of contracting the left peroneus longus tendon rupture and the left peroneus brevis tendon tear as a result of his job duties when compared to members of the general public or employees in general not equally exposed, thus satisfying prongs one and two. He further opined that Plaintiff's work duties contributed significantly to or were a causal factor in developing the rupture and tear in his left peroneus tendons, thus satisfying

prong three. During his deposition, Mr. Biggerstaff reaffirmed his opinion that Plaintiff was at an increased risk for developing peroneus tendon tears by virtue of the kind of work he performed over the course of 23 years with Defendant-employer. Therefore, we hold the Commission relied on competent evidence in concluding Plaintiff's rupture and tear of his left peroneus tendons constituted occupational diseases within the meaning of N.C. Gen. Stat. §97-53(13).

Defendant discounts Dr. Biggerstaff's opinion as having no basis and directs the court to the testimony of Drs. Carroll Jones and Brian Szura (orthopedic surgeons who reviewed Plaintiff's medical records but never actually saw Plaintiff), in which they indicate there is nothing to suggest that Plaintiff's tendon injuries were due to his job duties. However, "[w]here there is competent evidence to support the Commission's findings [(as outlined above with Dr. Biggerstaff's testimony)], they are binding on appeal even in light of evidence to support contrary findings." *Starr v. Gaston Cty. Bd. of Educ.*, 191 N.C. App. 301, 304-05, 663 S.E.2d 322, 325 (2008). The Commission "is the sole judge of the credibility of the witnesses and the weight to be given to their testimony, and may reject a witness' testimony entirely if warranted by

disbelief of that witness." *Pittman v. Int'l Paper Co.*, 132 N.C. App. 151, 156-57, 510 S.E.2d 705, 709, *disc. review denied*, 350 N.C. 310, 534 S.E.2d 596 (1999) (citation and quotation marks omitted). Here, the Commission did not err in relying more heavily on Dr. Biggerstaff's testimony. Finding of fact 33 clearly states that the Commission "accords greater weight to the testimony [of] Dr. Biggerstaff, Plaintiff's treating physician, as opposed to Drs. Jones and Szura, who each performed a cold record review without ever examining Plaintiff."

Defendant argues the left peroneus longus tendon rupture and the left peroneus brevis tear are not occupational diseases because they resulted from one maneuver during the 13 February 2008 incident and were not a gradual result of a series of events. Indeed, "occupational disease" is defined as a diseased condition caused by a series of events, of a similar or like nature, occurring regularly or at frequent intervals over an extended period of time, in employment. N.C. Gen. Stat. § 97-52 (2009). "The term has likewise been defined as a diseased condition arising gradually from the character of the employee's work." *Henry*, 234 N.C. at 130-31, 66 S.E.2d at 696. Here, there is competent evidence to show Plaintiff's left peroneus

tendons gradually became unhealthy, ultimately resulting in the rupture and tear. Dr. Jones stated that unless someone has an "absolutely horrible traumatic injury, you know, if somebody were to take a machete to your leg or if you were in a bad car wreck[,]" a healthy tendon would not rupture. "[A]ny tendon that ruptures under the circumstances described in this event was not healthy to begin with. These are very strong, stout tendons. And so some process had been occurring for years before this happened." Plaintiff testified that in May or June 2006, he had pain in the ball and heel areas of both his feet while performing his job. He sought medical treatment with Carolina Foot Care in July 2006 and was fitted with shoe inserts molded to his feet. The pain continued, and Plaintiff testified his job duties made the pain worse. On 13 February 2008, Plaintiff felt a pop and excruciating, hot pain through his left foot and leg. Soon after, via an MRI, Plaintiff was diagnosed with the rupture and tear of his left peroneus tendons. Therefore, we hold there is competent evidence to classify Plaintiff's rupture and tear of his left peroneus tendons as an occupational disease that occurred gradually over time.

Defendant also argues the Commission erred in qualifying tendonosis, the degeneration of the tendon, as an occupational

disease under N.C. Gen. Stat. § 97-53(13). Defendant argues there is no competent evidence to reach such a conclusion. We agree. Dr. Jones, Defendant's medical expert who never examined Plaintiff, testified based on her records review that Plaintiff had tendonosis. However, neither Dr. Biggerstaff nor Dr. Spivey, Plaintiff's treating physicians, diagnosed Plaintiff with tendonosis or even mentioned or discussed "tendonosis" in their testimonies. Not one prong of the *Rutledge* test was satisfied with regard to qualifying tendonosis as an occupational disease. Dr. Jones, in fact, stated, "No one has ever clearly correlated a certain maneuver or a certain job with a certain type of tendonosis." He further stated, "[F]or every [Plaintiff] who does what [Plaintiff] did every day for his entire career, there's probably 100 [Plaintiffs] doing the same thing that didn't develop peroneal tendonosis." Thus, we find there is no competent evidence in the record to support the Commission's finding of fact 34 and conclusion of law 2 that tendonosis is an occupational disease within the meaning of N.C. Gen. Stat. § 97-53(13). Accordingly, we reverse the Commission's opinion and award insofar as it concludes that Plaintiff's job placed him at a greater risk of developing

tendonosis and was a causal factor in his development of tendonosis.

B. Sufficient Findings of Fact and Conclusions of Law

Defendant argues the Commission's findings of fact and conclusions of law are insufficient to establish that Plaintiff developed compensable occupational diseases because the findings and conclusions fail to include determinations concerning the characteristics, symptoms, and manifestations of the conditions from which Plaintiff suffers as is required under *Wood v. J.P. Stevens & Co.*, 297 N.C. 636, 640, 256 S.E.2d 692, 696 (1979).[1] In *Wood*, the Commission held that byssinosis was not an occupational disease and denied the plaintiff's claim. *Id.* at 639, 256 S.E.2d 692 at 695. The Commission heard no evidence, basing its decision solely on the parties' stipulations and information contained on the forms the plaintiff filed to claim compensation benefits. *Id.* at 639-40, 256 S.E.2d at 695. Our Supreme Court held the Commission erred by denying the plaintiff's claim without "hearing evidence or making findings of fact" regarding the nature of byssinosis. *Id.* at 640, 256

[1] Because we reverse the Commission's ruling on tendonosis being an occupational disease, we do not address whether the Commission failed to make sufficient findings of fact regarding tendonosis.

S.E.2d at 695. The Court stated that such findings are typically based on expert medical testimony. *Id.*

This case is distinguishable from *Wood*. Here, unlike in *Wood,* the Commission granted Plaintiff's claim, but not without hearing evidence or making findings of fact regarding the nature of Plaintiff's tenosynovitis and torn and ruptured left peroneus tendons. The Commission reviewed the testimony of three orthopedists, Drs. Biggerstaff, Jones, and Szura, who discussed at length the characteristics, symptoms, and possible causes of Plaintiff's various diseases. In Dr. Biggerstaff's deposition, he explained that a tendon is a band of tissue that connects a muscle to a bone; the tendon slides back and forth to help the muscles move a part of the body. He discussed the location and characteristics of various tendons in the left foot and explained that the tendon sheath encloses the tendons and that, within that sheath is a synovial membrane which contains a lubricant to minimize friction between the tendon and the synovial membrane. He defined tenosynovitis as "the inflammation of the synovium which surrounds the tendons," and explained that a "repetitive motion," "an acute injury," or "overuse of a particular tendon" can cause tenosynovitis. Dr. Jones stated that tenosynovitis is "inflammation in the sheath,

which is essentially like a tube or covering around the tendon." He stated that tenosynovitis can occur from "overuse" or "an injury." Dr. Szura further confirmed that tenosynovitis is "an inflammation of the tenosynovium, which is the tissue which surrounds all tendons. And tenosynovitis is inflammation which can cause damage to the underlying tendon tissue, particularly if it's chronic." Dr. Szura also testified to the methods of diagnosing tenosynovitis as well as possible causes and the development of the disease. With regard to the peroneus tendons, Dr. Biggerstaff described the brevis and longus peroneus tendons as "almost like tubes or cylinders" and explained their locations in the leg as well as their functions. He discussed Plaintiff's injuries of each of those tendons and his attempt to repair them. Dr. Jones also elaborated on the peroneus tendons, describing their location and functions. Dr. Szura discussed the use and movement of peroneus tendons. Therefore, we hold the Commission had a full understanding of the description of Plaintiff's various conditions to determine that Plaintiff contracted the occupational diseases of tenosynovitis and the rupture and tear of his left peroneus tendons.

Defendant argues the Commission should have made specific findings of fact regarding the characteristics, manifestations, and symptoms of Plaintiff's various diseases. However, we note, "the commission is not required to make findings as to each fact presented by the evidence, it is required to make specific findings with respect to crucial facts upon which the question of plaintiff's right to compensation depends." *Graham v. Masonry Reinforcing Corp. of Am.*, 188 N.C. App. 755, 763, 656 S.E.2d 676, 682 (2008) (citation and quotation marks omitted.) Here, the Commission reviewed medical expert testimony discussing the nature of Plaintiff's diseases, and we hold it made adequate findings of fact in reaching its ultimate decision to grant compensation.

C. Total Temporary Disability Compensation Award

Defendant argues the Commission's conclusion of law that Plaintiff is entitled to temporary total disability benefits is not supported by the Commission's findings of fact. Defendant argues the Commission never made any determination as to Plaintiff's ability to work, and, as such, conclusion of law 4 is not supported by any findings of fact. We disagree. In determining if a plaintiff has met the burden of proving loss of wage earning capacity, "the Commission must consider not only

the plaintiff's physical limitations, but also his testimony as to his pain in determining the extent of incapacity to work and earn wages such pain might cause." *Webb v. Power Circuit, Inc.*, 141 N.C. App. 507, 512, 540 S.E.2d 790, 793 (2000). Here, Plaintiff testified he had been unable to earn any income due to "the nature of [his] injury, the debilitating level of pain within [his] left foot [limiting his] ability to stand, walk, sit even flat-footed for extended periods of time." He further testified his injury interfered with his ability to sleep and concentrate. The Commission's finding of fact 18 discusses Plaintiff's pain and inability to walk. Finding of fact 19 addresses that Plaintiff had not worked for Defendant-employer or any other employer since 4 April 2008 when Defendant-employer last provided sedentary work for Plaintiff. Thus, we hold that competent evidence and findings of fact 18 and 19 support the Commission's conclusion of law that Plaintiff is entitled to temporary total disability compensation.

Defendant finally argues the Commission erred in starting Plaintiff's total temporary disability compensation on 5 April 2008 when the Commission approved the parties' stipulation that no compensation was sought from 5 April to 7 October 2008 due to Plaintiff's receipt of short-term disability from an employer-

funded disability plan. When a stipulation has been approved by the Commission, that stipulation "is binding [on appeal] absent a showing that there has been error due to fraud, misrepresentation, undue influence, or mistake." *Moore v. Concrete Supply Co.*, 149 N.C. App. 381, 386, 561 S.E.2d 315, 318 (2002) (citations and quotation marks omitted). Stipulation seven, approved by the Commission, clearly states, "Plaintiff does not seek to be awarded disability compensation for the period from April 5, 2008 through October 7, 2008, when he received short-term disability benefits from Defendant-Employer pursuant to its self-funded plan." Still, the Commission awarded Plaintiff disability compensation from 4 April 2008 onward. Plaintiff argues that stipulation seven states Defendants would receive a credit for the period when the employer paid short-term disability benefits. As stipulation seven says nothing of the sort, we reverse the Commission's opinion and award insofar as it awards Plaintiff temporary total disability compensation for the period from 5 April through 7 October 2008. We remand to the Commission for a new order of temporary total disability compensation consistent with this opinion.

IV. Conclusion

We hold the Commission did not err in concluding that Plaintiff's tenosynovitis and rupture and tear of his left peroneus tendons are occupational diseases under N.C. Gen. Stat. § 97-53 and required compensation. We reverse the Commission's conclusion that Plaintiff's tendonosis is an occupational disease within the meaning of N.C. Gen. Stat. § 97-53(13). We reverse the Commission's award of temporary total disability compensation for the period from 5 April through 7 October 2008 and remand to the Commission for a new order of temporary total disability compensation consistent with this opinion.

Affirmed in part, Reversed in part, and Remanded.

Judges THIGPEN and MCCULLOUGH concur.

Report per Rule 30(e).