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NO. COA13-761
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

KELLY WAYNE FIELDS,
Employee,
Plaintiff-Appellee,

v.

North Carolina
Industrial Commission
I.C. Nos. 092692, X10682

HARNETT COUNTY,
Employer,
SELF-INSURED (KEY RISK, Third-
Party Administrator);

and

TOWN OF COATS,
Employer,
N.C. LEAGUE OF MUNICIPALITIES,
Carrier,
Defendants.

Appeal by Defendants Harnett County and Key Risk from opinion and award entered by the North Carolina Industrial Commission on 4 March 2013 and amended opinion and award entered by the North Carolina Industrial Commission on 28 March 2013. Heard in the Court of Appeals 19 November 2013.

Scudder & Hedrick, PLLC, by April D. Seguin, for Plaintiff-Appellee.

Womble Carlyle Sandridge & Rice, LLP, by Julie B. Bradburn, for Defendants-Appellants Harnett County and Key Risk.

Teague, Campbell, Dennis & Gorham, L.L.P., by Dayle A. Flammia, for Defendants-Appellees Town of Coats and N.C. League of Municipalities.

McGEE, Judge.

Kelly Wayne Fields ("Plaintiff") sustained a back injury on 22 August 2008 in the course of his employment with Defendant Harnett County ("Harnett County"). Plaintiff began working for Defendant Town of Coats ("Coats") on 3 August 2009. Plaintiff subsequently injured his back in an altercation with a criminal suspect on 9 October 2010, while employed with Coats.

Plaintiff underwent surgery to alleviate his back pain on 31 October 2011. The Commission found that the surgery and "disability [were] the result of the injuries which Plaintiff sustained on August 22, 2008, while employed by Harnett County." The Commission further found "the incident which occurred while [Plaintiff was] employed with Defendant [] Coats did not substantially alter Plaintiff's back condition or cause the resulting surgery." The Commission dismissed Coats as a party and ordered Harnett County to pay for all of Plaintiff's related medical expenses incurred as a result of his 22 August 2008 injury.

Harnett County and Key Risk (together, "Defendants") appeal.

I. Standard of Review

"Appellate review of an award from the Industrial Commission is generally limited to two issues: (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." *Starr v. Gaston Cty. Bd. Of Educ.*, 191 N.C. App. 301, 304, 663 S.E.2d 322, 325 (2008). "Where there is competent evidence to support the Commission's findings, they are binding on appeal even in light of evidence to support contrary findings." *Id.* at 304-05, 663 S.E.2d at 325. "The Commission's conclusions of law are reviewed *de novo*." *Starr*, 191 N.C. App. at 305, 663 S.E.2d at 325.

II. Whether the Commission "Applied an Incorrect Legal Standard"

A. Lack of Findings Rejecting Plaintiff's Testimony

Defendants first argue the Commission "applied an incorrect legal standard to determine whether Plaintiff suffered an aggravation of a pre-existing condition on October 9, 2010, while at Coats." Defendants have specified neither a finding of fact nor a conclusion of law to challenge in this section of their appeal. Rather, Defendants contend "the Commission erred in dismissing Coats, and should have applied the 'aggravation

rule' to find Coats liable for Plaintiff's disability and surgery as a matter of law."

Defendants contend there "is no finding selectively rejecting Plaintiff's testimony related to the incapacitating and disabling pain that occurred upon the Coats injury." However, "the Commission need not make exhaustive findings as to each statement made by any given witness or make findings rejecting specific evidence." *Hensley v. Industrial Maint. Overflow*, 166 N.C. App. 413, 421, 601 S.E.2d 893, 899 (2004). In *Hensley*, the defendants contended the Commission erred in "giving no reason why it disregarded the opinion of the treating physician" and "in not making detailed findings about" certain videotape. *Id.* This Court concluded that the defendants did not point to any omission of "crucial and specific facts upon which the right to compensation depends[.]" *Id.* (alteration in original).

The Commission need not make findings selectively rejecting part of Plaintiff's testimony. Defendants do not argue that any "crucial and specific" facts upon which the right to compensation depends were omitted. *Johnson v. Southern Tire Sales & Serv.*, 358 N.C. 701, 705, 599 S.E.2d 508, 511 (2004). Rather, Defendants point only to omission of facts that are necessary to reaching a disposition that is favorable to

Defendants. Thus, Defendants have not shown error on this basis.

B. Application of *Newcomb v. Greensboro Pipe Co.*

Defendants further contend "the Commission should have attempted to apportion Defendants' liability, or found Coats jointly and severally liable with the Sheriff's Office under the principles set forth in *Newcomb v. Greensboro Pipe Co.*, 196 N.C. App. 675, 677 S.E.2d 167 (2009)."

In *Newcomb*, the plaintiff "sustained a compensable injury to his back while employed as a truck driver at Greensboro Pipe." *Newcomb*, 196 N.C. App. at 676, 677 S.E.2d at 167. Later, while working at Mabe Trucking, the plaintiff fell on a tile floor. The Commission found the plaintiff's surgery was due to a combination of the accidents and the evidence "does not show the relative contribution" of the two accidents. *Id.* at 678, 677 S.E.2d at 168. The Commission concluded apportionment was not possible and therefore both carriers were jointly and severally liable. *Id.* at 678, 677 S.E.2d at 169.

Newcomb is distinguishable from the present case on both the facts and the relevant issues of law. In the present case, the Commission concluded that "the incident which occurred while [Plaintiff was] employed with Defendant [] Coats did not substantially alter Plaintiff's back condition or cause the

resulting surgery." The Commission made no finding indicating that disability resulted or surgery was required due to a combination of the incidents. In *Newcomb*, by contrast, the Commission found the disability was due to a combination of the two accidents. *Newcomb*, 196 N.C. App. at 678, 677 S.E.2d at 168 (emphasis added).

Furthermore, in the present case, Defendants argue the Commission should have applied an "aggravation rule" to determine liability. By contrast, in *Newcomb*, the appellant argued the Commission should have applied the "last injurious exposure" rule to determine liability. *Id.* at 680, 677 S.E.2d at 170. This Court noted that the General Assembly adopted the "last injurious exposure" rule with respect to occupational disease, not accidents. *Id.* at 680, 677 S.E.2d at 170-71.

It is well-established that appellate courts do not have "the right to weigh the evidence and decide the issue on the basis of its weight." *Adams v. AVX, Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). The Commission's findings of fact are conclusive on appeal when supported by competent evidence, "even though there be evidence that would support findings to the contrary." *Id.* at 681, 509 S.E.2d at 414. "The [C]ourt's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Id.*

Defendants essentially request this Court to re-weigh the evidence and find that Plaintiff's surgery and disability were the result of a combination of the two incidents, or purely a result of the second incident while Plaintiff worked for Coats (the "Coats incident"). This Court cannot do so. Even though there may be evidence that would support such findings, we are without authority to re-weigh the evidence and make findings. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414.

III. Whether the Commission Failed to Make Findings

Defendants next argue "the Commission failed to make findings of fact as to whether the Coats incident contributed to Plaintiff's inability to earn wages, and as to the expert testimony presented regarding causation and aggravation." Defendants make three sub-arguments in this section.

A. Lack of Findings On Coats Incident

Defendants argue "the Commission made no findings regarding Plaintiff's evidence that the . . . Coats incident incapacitated Plaintiff." Defendants contend findings were required because "they controlled the proper application of the 'aggravation rule,' as well as determined the onset of Plaintiff's alleged disability, which in turn controlled the liability of the Defendants."

While the Commission need not make findings as to "each

fact presented by the evidence, it must find those crucial and specific facts upon which the right to compensation depends so that a reviewing court can determine on appeal whether an adequate basis exists for the Commission's award." *Johnson*, 358 N.C. at 705, 599 S.E.2d at 511.

Defendants contend as follows:

While the Commission could have inferred from the evidence that Plaintiff claimed a spontaneous increase in pain due to his escalating personnel situation, or factors unrelated to the Coats incident, it made no findings to this effect. Such findings, in turn, would have compelled the conclusion that Plaintiff's departure from the workforce was not attributable to the 2008 incident but rather some other cause. In such case, Plaintiff's alleged "disability" would not begin on October 11, 2010.

Defendants argue that, because the Commission made no finding that the Coats incident incapacitated Plaintiff, the Commission erred in not making a finding that the Coats incident did not incapacitate Plaintiff. This argument is without merit for several reasons. First, as previously discussed, we cannot reweigh the evidence. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414. Second, the Commission is not required to make findings rejecting certain evidence. *Hensley*, 166 N.C. App. at 421, 601 S.E.2d at 899. Third, Defendants have not demonstrated that the finding that the Coats incident did not incapacitate Plaintiff is a "crucial and specific fact[]" upon which the right to

compensation depends so that a reviewing court can determine on appeal whether an adequate basis exists for the Commission's award." *Johnson*, 358 N.C. at 705, 599 S.E.2d at 511.

This Court can determine whether an adequate basis exists for the award without a finding selectively rejecting part of Plaintiff's testimony. The following findings of the Commission show that an adequate basis exists to support the Commission's award:

[O]n August 22, 2008, Plaintiff sustained a . . . back injury in the course of his employment with [] Harnett County for which he received considerable medical treatment. The injury occurred while Plaintiff was arresting an individual. . . . Plaintiff . . . injured his back and shoulder.

4. On October 21, 2008, Plaintiff presented to Dr. Gary L. Smoot with complaints of low back pain as well as numbness in his bilateral toes and the balls of his feet. Plaintiff related the pain to the August 22, 2008 work injury. . . . Dr. Smoot also placed Plaintiff on light-duty work with restrictions. The MRI was done in November 2008, and Dr. Smoot reexamined Plaintiff on December 8, 2008, in follow-up. Dr. Smoot noted that the MRI produced results indicating that Plaintiff was suffering from a herniated lumbar disk at the L5-S1 level[.] . . .

5. By May 28, 2009, Dr. Smoot noted that Plaintiff's pain had returned and intensified, although Plaintiff denied any unusual activity or trauma. Plaintiff told Dr. Smoot that his pain was consistent, and it became so intense to the point that his "back locks up." Surgery was discussed with

Plaintiff, but Plaintiff indicated that he was nervous about the possibility of surgery, and did not wish to undergo surgery at that time.

6. On July 29, 2009, Plaintiff sought treatment from Dr. Nailesh Dave for pain management. . . . Dr. Dave continued to provide regular treatment in an effort to control Plaintiff's pain, but Plaintiff's condition did not really improve. On July 12, 2010, Dr. Dave noted that there was no change in Plaintiff's symptoms, and he continued to have moderate to severe pain radiating down his left leg. On September 15, 2010, Dr. Dave noted that Plaintiff was complaining of increasing low back pain and lumbar radicular pain. Plaintiff also complained of a shooting pain going down to his toes. Plaintiff reported to Dr. Dave that his pain was to the point that he increased his prescription of Neurontin.

7. On September 20, 2010, Plaintiff underwent a discogram by Dr. Erhan Atasoy. According to Dr. Atasoy, the lumbar discogram "clearly demonstrated" degenerative disk disease at L5-S1[.] . . . Dr. Atasoy indicated that although Plaintiff continued to work full time, he had been promoted at work to a position which involved less manual labor, so Plaintiff was able to continue to work full time, even though he was having a significant amount of pain. . . .

8. With regard to the [Coats] incident Plaintiff testified that he had received a call that there was a vehicle traveling at high speeds, carelessly and recklessly, coming from the Town of Benson into Coats. . . . According to Plaintiff, the individual got out of the car and shortly thereafter there was a struggle during which Plaintiff fought him to the ground. Although Plaintiff testified that he injured

his back in this altercation, he also testified that after he was injured while he was working for [] Harnett County, there was never a time that his back was pain free prior to the [Coats] incident while he was employed with [] Coats. Plaintiff also agreed that his pain had been increasing as time went by after the Harnett County incident.

. . . .

10. Due to Plaintiff's ongoing complaints which had existed since his injury with [] Harnett County, Dr. Atasoy referred Plaintiff to Dr. Mark Mikles, a Board Certified Orthopedic Surgeon. . . . At the time of the examination Plaintiff's main complaint was lower back pain, and right leg pain. Plaintiff told Dr. Mikles that this pain had been present since he was injured in August 2008. . . . Dr. Mikles reviewed the MRI which had been done on November 22, 2008, and noted that it was consistent with Plaintiff's current complaints. However, given the age of the MRI, Dr. Mikles felt that it would be prudent to get an updated MRI if he was going to decide whether Plaintiff needed surgery. . . .

11. The updated MRI was done on March 21, 2011, and according to Dr. Mikles, it produced results "fairly similar" to the prior MRI. As a result of the March 21, 2011 MRI, Dr. Mikles recommended surgery. Significantly, according to Dr. Mikles the discogram which had been done in September 2010, produced results consistent with what he saw on the March 2011 MRI, and the results of the discogram were likewise consistent with the results of the MRI done in November 2008. The objective testing did not reveal any worsening of Plaintiff's condition after the incident while employed by the Coats.

Defendants again assert as error an omission of findings necessary to reach a disposition favorable to Defendants, not to determine whether an adequate basis exists to support the Commission's award. Defendants again fail to show error.

B. Findings on Dr. Dave's Testimony

Defendants argue the Commission's "decision failed to address the expert testimony on causation, including findings to indicate that the Commission considered Dr. Dave's testimony that the [Coats] incident aggravated Plaintiff's condition." Defendants cite *Jenkins v. Easco Aluminum Corp.*, 142 N.C. App. 71, 541 S.E.2d 510 (2001), to support their contention that, whenever expert testimony is offered, "the Commission *must* make definitive findings of fact that indicate that it considered and weighed the evidence."

In *Jenkins*, expert testimony was offered as to "whether the quality inspector job performed by [the] plaintiff was an adequate indicator of her ability to compete for similar jobs in the marketplace." *Jenkins*, 142 N.C. App. at 78, 541 S.E.2d at 515. There was "no mention at all of [the expert's] testimony in the opinion and award, nor any finding from which we can reasonably infer that the Commission gave proper consideration to his testimony." *Id.*

In the present case, the Commission made the following

findings regarding Dr. Dave's testimony:

6. On July 29, 2009, Plaintiff sought treatment from Dr. Nailesh Dave for pain management. Dr. Dave indicated that although surgery had been recommended for Plaintiff's condition, Plaintiff was not willing to do so. Dr. Dave noted that Plaintiff was there for conservative management. Dr. Dave continued to provide regular treatment in an effort to control Plaintiff's pain, but Plaintiff's condition did not really improve. On July 12, 2010, Dr. Dave noted that there was no change in Plaintiff's symptoms, and he continued to have moderate to severe pain radiating down his left leg. On September 15, 2010, Dr. Dave noted that Plaintiff was complaining of increasing low back pain and lumbar radicular pain. Plaintiff also complained of a shooting pain going down to his toes. Plaintiff reported to Dr. Dave that his pain was to the point that he increased his prescription of Neurontin.

.

9. Plaintiff returned to Dr. Dave on October 11, 2010, reporting an increase in his symptoms. At that time, Dr. Dave restricted Plaintiff from all work for one month. Plaintiff returned to Dr. Dave on November 1, 2010 and Dr. Dave again restricted Plaintiff from all work for one month. On November 15, 2010, Plaintiff returned to Dr. Dave. Dr. Dave's PA, Bianca Goo, continued to excuse Plaintiff from work through January 3, 2011, only allowing him to do in-service classroom work so that he could maintain his law enforcement certifications. On December 21, 2010, Bianca Goo, PA again restricted Plaintiff from all work through February 28, 2011. On February 15, 2011, Bianca Goo, PA, wrote another work note excusing Plaintiff from all work through April 30, 2011. Neither

Dr. Dave nor Bianca Goo, PA, ever released Plaintiff to return to work. Dr. Dave has continued to provide pain management treatment to Plaintiff, including pain medications and anti-depressants.

In stark contrast to *Jenkins*, the Commission discussed Dr. Dave's testimony at some length. From these findings, we can reasonably infer that the Commission gave proper consideration to Dr. Dave's testimony. Again, even though the record may contain evidence that would support findings contrary to those the Commission made, this Court is without authority to re-weigh the testimony and make findings. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414; *Starr*, 191 N.C. App. at 304-05, 663 S.E.2d at 325. The Commission did not err on this basis.

C. Findings 11, 15, and 7

Defendants argue Findings 11, 15, and 7 are not supported by competent evidence.

i. Finding 11

Finding 11 is as follows:

11. The updated MRI was done on March 21, 2011, and according to Dr. Mikles, it produced results "fairly similar" to the prior MRI. As a result of the March 21, 2011 MRI, Dr. Mikles recommended surgery. Significantly, according to Dr. Mikles the discogram which had been done in September 2010, produced results consistent with what he saw on the March 2011 MRI, and the results of the discogram were likewise consistent with the results of the MRI done in November 2008. The objective testing did

not reveal any worsening of Plaintiff's condition after the incident while employed by [] Coats.

Defendants contend that testimony on the similarity of the MRIs did not constitute competent evidence supporting a finding that Plaintiff's objective condition did not worsen or alter.

Relevant portions of Dr. Mikles's deposition are below:

[Attorney for Coats]. And was that MRI, the one done on March 21, 2011, did that produce results consistent with the MRI which had been done on November 22, 2008?

[Dr. Mikles]. Yes, it seems fairly similar.

Q. And as a result of the MRI that was done on March 21, 2011, did that lead you to reach a decision about whether the patient needed surgery or not?

A. Yes.

Q. And what was that decision?

A. That I recommended surgery.

. . . .

Q. If you had examined the patient in November of 2008 and had seen this MRI, would you have recommended surgery based on that MRI?

. . . .

A. No, because he would not have had the discogram and the other injections and everything else at that point.

Q. And he had the discogram in September 2010, did he not?

A. Yes.

Q. And did that produce results consistent with what you saw on the March 2011 MRI?

A. Yes.

Q. And were the results of the discogram consistent with the results of the MRI done in November of 2008?

A. Yes.

Defendants contend that, because "Dr. Mikles refused to say that he would have recommended surgery for Plaintiff based on the 2008 MRI alone[,] " his testimony that the "two MRIs were similar was incompetent to establish that Plaintiff's condition did not worsen or alter between 2008 and 2011[.]"

However, the Commission's finding is not undermined by Dr. Mikles' additional testimony that he could not say whether he would have recommended surgery for Plaintiff based on the 2008 MRI alone. The finding that "objective testing did not reveal any worsening of Plaintiff's condition after the" Coats incident is supported by the competent evidence in the record quoted above.

Defendants argue Dr. Dave's testimony shows Plaintiff's condition had objectively worsened following the Coats incident. Again, regardless of the existence of evidence which might support a contrary finding, we are without authority to re-weigh the evidence and make findings. *Adams*, 349 N.C. at 681, 509

S.E.2d at 414; *Starr*, 191 N.C. App. at 304-05, 663 S.E.2d at 325.

ii. Finding 15

Finding 15 is as follows:

15. The Full Commission finds that Plaintiff's October 31, 2011 surgery and causally related disability are the result of the injuries which Plaintiff sustained on August 22, 2008, while employed by Harnett County. The Full Commission further finds that the incident which occurred while employed with [] Coats did not substantially alter Plaintiff's back condition or cause the resulting surgery. Plaintiff already needed surgery prior to the incident which occurred while employed by [] Coats.

Defendants contend "the determination in Finding 15 that '[P]laintiff already needed surgery' before the Coats incident was not supported by competent evidence." Defendants highlight testimony from Dr. Dave that "Plaintiff's condition was degenerative and not perilous, and that surgical intervention would be elective based on pain."

Relevant portions of Dr. Dave's testimony are as follows:

[Attorney for Defendants]. . . . [W]hen you have degenerative disc disease such as he had, when the physicians are giving you the option for surgery, is that a condition, say, compared to a herniated disc, that you have to get operated on, or is that an elective procedure by the patient?

[Dr. Dave]. Yes. . . . If the herniated disc is there and obvious loss of functions, then there is no other option but the

surgery. But if there is a borderline findings on the MRI and then borderline disc disease and degenerative disease, then they still have a[n] option of restricting the work and taking some medication -- will help them to go on . . . without much of a problem.

. . . .

Q. So, when he elected not to have surgery at that point, you were okay with his election?

A. Yes, ma'am. . . . Because we still had an option of treating with the epidural steroid injections[.]

Defendants contend surgery was not needed because surgery was contingent on Plaintiff's pain level. This determination depends on the meaning of "needed." Insofar as the Commission meant surgery was absolutely medically necessary, the finding is unsupported. However, insofar as the finding means surgery was recommended as an option if Plaintiff's pain levels became unbearable, the finding is supported by the competent evidence in the record quoted above.

iii. Finding 7

Defendants argue the portion of Finding 7 that "[s]urgery was again recommended" was not supported by competent evidence. Finding 7 suggests Dr. Atasoy recommended surgery. The record includes the following "Pain Clinic Note" from Dr. Atasoy:

I explained to [Plaintiff] that he has three options to help control his back pain. The

first option is to continue his pain medication regimen as prescribed. The second one is to try some further interventional therapy which could include a disk ablativ procedure (IDET). He will need a lumbar diskogram to evaluate this possible therapy. If he does not want any interventional therapy, then he would not need a diskogram. [Plaintiff] has considered all options and he does wish to consider interventional therapy for his pain but he does not want surgery, so will proceed with lumbar diskogram as scheduled. He has been advised of the risks of the procedure and he is willing to proceed. Will reevaluate him in a few weeks after this diskogram and post-diskogram CT scan.

As with the previous finding, the determination depends on the meaning of "recommend." Insofar as "recommend" implies Dr. Atasoy presented surgery as an option to Plaintiff as a method for alleviating his back pain, this finding is supported by competent evidence in the record quoted above.

IV. Whether the Commission Erred in "Concluding that the 2008 Incident Caused Plaintiff's Disability Beginning October 11, 2010"

Defendants next argue the "Commission erred in concluding that the 2008 incident caused Plaintiff's disability beginning October 11, 2010." Defendants again fail to specify a finding of fact or conclusion of law to challenge on appeal. We assume Defendants intend to challenge Finding 15, below:

15. The Full Commission finds that Plaintiff's October 31, 2011 surgery and causally related disability are the result of the injuries which Plaintiff sustained on

August 22, 2008, while employed by Harnett County. The Full Commission further finds that the incident which occurred while employed with [] Coats did not substantially alter Plaintiff's back condition or cause the resulting surgery. Plaintiff already needed surgery prior to the incident which occurred while employed by [] Coats.

Defendants contend "the expert testimony offered here fell far short of establishing a causal connection between the 2008 incident and Plaintiff's sudden disability on October 11, 2010." Defendants assume, without citation to supporting authority, that the causation of Plaintiff's back injury constituted a complicated medical question "far removed from the ordinary experience and knowledge of laymen[.]" *Holley v. ACTS, Inc.*, 357 N.C. 228, 232, 581 S.E.2d 750, 753 (2003). Assuming *arguendo*, without deciding, that the question of causation in this case presents such a complicated medical question as described in *Holley*, Defendants still fail to show the Commission erred.

Defendants point to deposition testimony from Dr. Mikles, who "agreed the [Coats] incident was consistent with an exacerbation of Plaintiff's existing condition." Dr. Mikles testified as follows:

[Attorney for Defendants]. . . . [W]hat could have explained the going from being able to work and function to being incapacitated as a result of that second injury?

. . . .

[Dr. Mikles]. It just may have been a progression of the degenerative disc bulging.

Q. Based on the description of what [Plaintiff] says happened in October of 2010, does that indicate to you that he suffered some type of injury at that time?

. . . .

A. I would say more of an exacerbation.

Defendants cite no authority holding that an exacerbation of an injury requires the Commission to hold the second employer liable for the incidents. Defendants also cite no authority holding that an exacerbation of an injury requires the Commission to hold both employers jointly and severally liable. Again, Defendants request that this Court re-weigh the evidence and find that Plaintiff's surgery and disability were the result of a combination of the two incidents or purely the result of the Coats incident. This we cannot do. We are without authority to weigh the evidence and make findings. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414; *Starr*, 191 N.C. App. at 304, 663 S.E.2d at 325.

In a footnote near the end of their brief, Defendants challenge Finding 3 because "the parties did not enter into a stipulation that [] Plaintiff suffered a compensable injury."

Form 63 in the record states Harnett County's payment of compensation "is expressly being made without prejudice to Defendants to later deny the compensability of your claim." Thus, the portion of Finding 3 indicating the parties stipulated that the 2008 injury was compensable is not supported by competent evidence. However, this error does not necessitate reversal of the Commission's opinion and award. Other findings of fact discussed earlier in this opinion show the injury was compensable.

V. Whether the Commission Erred in "Failing to Properly Decide Whether Plaintiff Constructively Refused Suitable Employment Through His Alleged Misconduct"

Defendants next argue the Commission "erred by failing to make the crucial findings of fact to show that it considered the evidence presented as to the issue of Plaintiff's alleged refusal of suitable employment." The finding is as follows:

The Town Manager for [] Coats, Kenny Cole, suspended Plaintiff on November 12, 2010. [] Coats terminated [P]laintiff on March 8, 2011. The reasons for Plaintiff's termination are disputed by the parties, but [] Coats alleges Plaintiff was terminated for cause. At the time of his suspension and at the time of his termination, Plaintiff was medically restricted from all work. Whether [] Coats terminated Plaintiff for misconduct for which a non-disabled employee would be terminated is an issue that does not require decision because Plaintiff has been medically restricted from all work since October 11, 2010, including the date he was suspended and the date he

was terminated.

Defendants contend that Dr. Dave's testimony, regarding a notation on 15 November 2010 that Plaintiff could do in-service classroom work, was not in the Commission's findings. Defendants argue this constituted a failure to make a crucial finding. However, the Commission did make a finding regarding a limited return to work, as follows:

On November 15, 2010, Plaintiff returned to Dr. Dave. Dr. Dave's PA, Bianca Goo, continued to excuse Plaintiff from work through January 3, 2011, only allowing him to do in-service classroom work so that he could maintain his law enforcement certifications.

Furthermore, competent evidence exists to support the finding.

Dr. Dave testified as follows:

[Attorney for Plaintiff]. And then it looks like he saw you again on November 15th, 2010.

[Dr. Dave]. (Examines document). Yes.

Q. And my records show that you wrote another work note on that date. Do your records show what that work note says?

A. I think from November 15th onwards, one of -- my nurse practitioner, Bianca Goo, started seeing [him]. . . . And I think -- and she continued with the work restrictions.

Q. Okay. And the note that I've got from 11/15 says that "Mr. Fields should be excused from work," and "he's unable to perform the duties required of his job" from

11/15/2010 to 1/3/2010. But I'm guessing that should be --

A. Yes.

Q. -- 2011?

A. Yes.

. . . .

Q. And that he was allowed to perform in-service.

A. Yes.

This evidence indicates Plaintiff was medically restricted from all work, with the limited exception of doing "in-service classroom work so that he could maintain his law enforcement certifications." The Commission did not err because competent evidence supports this finding. Because of our holding, we do not reach Defendants' sub-argument that the Commission should have applied *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 597 S.E.2d 695 (2004).

VI. Whether the Commission Erred in Failing to Make Findings as to Plaintiff's Pre-2008 Medical History

Defendants' final argument is that the failure to make findings as to Plaintiff's pre-2008 history of disc pathology was error because "the right to compensation from [Harnett County] depended upon resolution of the issue." Defendants again assert as error an omission of findings that are necessary, not to determine whether an adequate basis exists for

the Commission's award, but rather are necessary to reach a disposition favorable to Defendants. Furthermore, as discussed earlier, this Court cannot re-weigh the evidence. *Adams*, 349 N.C. at 681, 509 S.E.2d at 414; *Starr*, 191 N.C. App. at 304-05, 663 S.E.2d at 325. The Commission is not required to make findings rejecting certain evidence. *Hensley*, 166 N.C. App. at 421, 601 S.E.2d at 899. Therefore, again, Defendants failed to show the Commission erred on the basis that the Commission failed to make certain findings of fact.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).