IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 14-1118

Filed: 21 April 2015

TIMOTHY LOWE,
Employee,
Plaintiff,

v.

BRANSON AUTOMOTIVE,
Employer,

HARTFORD INSURANCE COMPANY,
Carrier,
Defendants.

From the N.C. Industrial Commission
I.C. No. X89669

Appeal by plaintiff from Opinion and Award entered 26 June 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 February 2015.

Casey S. Francis, for plaintiff.

Hedrick Gardner Kincheloe & Garofalo, LLP, by Lindsay N. Wise and M. Duane Jones, for defendants.

ELMORE, Judge.

Plaintiff appeals from the North Carolina Industrial Commission's ("the Commission" or "the Full Commission") Opinion and Award denying his claim for Workers' Compensation benefits. After careful consideration, we affirm.

I. Facts

Timothy Lowe (plaintiff) was employed as a tire technician by Branson Automotive (defendant-employer) for over six years as of the date of review by the

Commission. Plaintiff's duties as a tire technician included mounting, dismounting, and balancing tires and conducting oil changes. The job also required frequent lifting of 50-100 pounds, bending, and squatting.

Plaintiff filed a Form 18 ("Notice of Accident to Employer") on 28 February 2012 seeking workers' compensation benefits, alleging that on 8 February 2012:

> [He] was lifting a wheel and tire, which weighed approximately 110 pounds with both hands. As he was lifting the tire he felt a pop and an immediate onset of pain in his neck. [He] went to grab his neck with one hand, leaving the wheel and tire in his other hand. While supporting the weight of the wheel and tire with one hand, [he] felt another pop in his lower back an[d] immediately began to experience pain in his lower back with radiating tingling and numbness in his bilateral hands and feet.

Plaintiff's claim was heard before Deputy Commissioner Kim Ledford on 12 December 2012. The Deputy Commissioner entered an Opinion and Award concluding that plaintiff "sustained an injury by accident in the form of a specific traumatic incident arising out of and in the course of his employment with [defendant-employer], resulting in injury to his neck and lower back." The Deputy Commissioner ordered defendant-employer and defendant Hartford Insurance Company (collectively "defendants"), the insurer on the risk on the date of the alleged injury, to pay for: 1.) all medical treatment reasonably necessary for plaintiff's injury and 2.) temporary total disability benefits to plaintiff at the rate of $443.18. Defendants appealed to the Full Commission.

After reviewing defendants' appeal, the Commission reversed the Deputy Commissioner's Opinion and Award, concluding that "[p]laintiff did not sustain an injury by accident or suffer an injury to his back as a result of a specific traumatic incident of the work assigned, on February 8, 2012. . . . Therefore, [p]laintiff's claim for benefits under the North Carolina Workers' Compensation Act must be denied."

The Commission found the following relevant facts in support of its legal conclusion: during both the discovery period and hearing before the Deputy Commissioner, plaintiff did not fully disclose his history of treatment for back problems that occurred before the alleged 8 February 2012 injury. Although plaintiff conceded his back ached on occasion and that he saw his primary care physician, Dr. Thomas Milton Futrell, for back pain, evidence presented at the hearing indicated that plaintiff sought treatment on numerous occasions for re-occurring back pain before 8 February 2012.

On 9 and 15 February 2012, plaintiff sought medical treatment at Medzone. Nurse Martha Jo Denton met with plaintiff. Ms. Denton testified that plaintiff gave her no indication that his back pain resulted from a specific incident at work. Rather, Ms. Denton stated that plaintiff reported having suffered daily back pain for the past two years and the pain had worsened within the last two days.

Similarly, Mrs. Patti Branson, wife of Elliott Branson (the owner of defendant-employer) and defendant-employer's benefits manager, testified that plaintiff did not contact her about his alleged back injury even though he had previously reported a

workers' compensation claim to her on 14 June 2010 related to a knee injury. She learned about the alleged 8 February 2012 injury 16 days after the purported incident, when she called plaintiff at home to inform him of his short-term disability benefits.

After the alleged work-related injury, plaintiff saw several specialists to help treat his back pain, including Dr. Mark Dumonski, Dr. Hao Wang, and Dr. Andreas David Runheim. All three doctors gave expert witness deposition testimony before the Deputy Commissioner and stated they had no knowledge of plaintiff's preexisting history of back pain when they evaluated plaintiff and reached their conclusions about the cause of his back problems.

Accordingly, the Full Commission also found plaintiff's lack of credibility as a key factor in denying his claim:

> 11. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff's testimony that he sustained an injury to his neck and back at work on February 8, 2012 is not accepted as credible. Since the inception of the litigation of this claim, Plaintiff has given varying descriptions of how his alleged injury occurred. Plaintiff did not disclose his prior back problems to Defendants in discovery and did not tell Drs. Dumonski, Wang, or Runheim about his prior back problems. Plaintiff did not report a work-related injury to Mr. Branson on the alleged date of injury, and when he saw Nurse Denton, he did not relate his low back pain to an injury or incident occurring at work on February 8, 2012. To the extent that Plaintiff's wife, Manda Lowe, and Plaintiff's life-long friend, Joey Creasey, testified that Plaintiff told them he was injured at work, the Full Commission places greater weight on the testimony of Mr. and Mrs. Branson and the

records and testimony of Nurse Denton.

II. Analysis

a.) Findings of Fact

Plaintiff challenges numerous findings of fact in the Commission's Opinion and Award. We examine each of plaintiff's contentions below.

Review of an opinion and award of the Industrial Commission "is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law. This court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citations and quotation marks omitted). We review the Full Commission's conclusions of law *de novo*. *Starr v. Gaston Cnty. Bd. of Educ.*, 191 N.C. App. 301, 305, 663 S.E.2d 322, 325 (2008). "Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal." *Bishop v. Ingles Markets, Inc.*, ___ N.C. App. ___, ___, 756 S.E.2d 115, 118 (2014) (citation and quotation marks omitted).

i.) Finding #2

> 2. Plaintiff had a significant history of treatment for back problems prior to February 8, 2012, which he failed to disclose in his discovery responses and in his testimony on direct examination at the hearing before the Deputy Commissioner. The most that Plaintiff would concede about his back at the hearing was that his back would ache from time to time due to lifting heavy tires all day, and that

> he saw his primary care physician, Dr. Thomas Milton Futrell, for back pain from lifting tires. In actuality, Plaintiff sought treatment multiple times for ongoing back complaints and was prescribed various medications for treatment of back pain. When Plaintiff was seen by Dr. Harrison A. Latimer for treatment of his knee on June 21, 2010, Plaintiff told Dr. Latimer that he had been treating for low back pain for the past three to four years. From December 6, 2010 to January 26, 2011, Plaintiff treated with Dr. Futrell for back pain and spasms. Dr. Futrell prescribed multiple medications to treat the back pain and ultimately referred Plaintiff to a neurologist, at Plaintiff's request.

Plaintiff first challenges the portion of finding #2 that plaintiff "had a significant history of treatment for back problems prior to February 8, 2012" as being unsupported by competent evidence. We disagree.

Dr. Dumonski initially testified that the injury on 8 February 2012 was responsible for defendant's back pain. However, he then testified that after subsequently examining medical notes from Dr. Futrell and Ms. Denton's testimony, both of which noted plaintiff's prior treatment for daily back pain occurring two years prior to 8 February 2012, "[f]rom the standpoint of causation of his back pain that [evidence] would have an impact on my thoughts regarding the causation of [plaintiff's] back pain[.]"

Dr. Wang testified that plaintiff's prior back pain for two years prior to the alleged 8 February incident was:

> important information because we all base on what the patient report[s] back to us when we first saw the patient. We don't have any information regarding his previous

> medical history. If we don't know he had any chronic problems – and of course, his problem could be happening with th[ese] work-related injuries.

Because the doctors testified that plaintiff's prior back issues would have been key factors in their determination of causation, the finding that plaintiff had a "significant history of treatment for back problems" is supported by competent evidence.

With regard to plaintiff's argument that the remainder of finding #2 is unsupported by competent evidence, plaintiff, in his discovery responses, failed to disclose his prior back injuries on various occasions. In plaintiff's response to Interrogatory #12, he did not mention any prior back treatment within ten years and merely disclosed a 2010 knee injury. In his response to Interrogatory #15, he stated, "[t]o the best of my recollection my only physical complaints other than my injuries sustained in my accident on February 8, 2012 are identified in Interrogatory #12." Plaintiff's response to Interrogatory #16 stated, "[t]o the best of my recollection, I have had no other physical problems, illnesses, injuries or other complaints involving the same parts of my body that are a result of my accident on February 8, 2012."

In Requests For Production of Documents #4, plaintiff responded he "has not injured his back prior to this work related injury, and as such, no prior [medical] records exist." During direct examination, plaintiff also consistently denied the extent of his prior history of treatment for back problems:

> PLAINTIFF'S ATTORNEY: Okay. Had you ever received

> any types of medical treatment for any types of back pain?
>
> PLAINTIFF: I think one time before that I had – was having headaches. They sent me to the doctor. And one time before, you know, I said something about my back was kind of hurting me a little bit, and he gave me muscle relaxers for it then. But, you know, ever since then, I ain't [sic] never been to the doctor for my back or nothing [sic].
>
> . . .
>
> PLAINTIFF'S ATTORNEY: Okay. And if the medical records reflected that you went a few times, would that – would you agree with that?
>
> PLAINTIFF: For my back?
>
> PLAINTIFF'S ATTORNEY: Right.
>
> PLAINTIFF. No. I don't remember going a few times for my back.
>
> PLAINTIFF'S ATTORNEY: Did you receive a referral from them for – for your back–
>
> PLAINTIFF: No.
>
> PLAINTIFF'S ATTORNEY: – for back treatment? If the medical records reflect that you were actually referred to see a treatment facility called Neuroscience Center, do you – does that ring a bell to you?
>
> PLAINTIFF: No.

Plaintiff also denied having any prior treatment other than obtaining muscle relaxers from Dr. Futrell on a singular occasion and attributed his prior back pain to "lift[ing] tires and wheels all day."

Contrary to plaintiff's testimony, the medical records (stipulated as admitted evidence) reflect Dr. Harrison A. Latimer's notations that plaintiff received treatment for lower back pain for three or four years prior to 21 June 2010. Moreover, defendant saw Dr. Futrell on multiple occasions for back pain. On 6 December 2010, plaintiff complained of back spasms and received a muscle relaxer and narcotic medicine to relieve the pain. On 4 January 2011, plaintiff returned to Dr. Futrell and said "he was having a lot of trouble with his back[.]" Dr. Futrell prescribed plaintiff with different medication, but it failed to work effectively. Plaintiff saw Dr. Futrell on 26 January 2011 and requested to see a specialist. After that appointment, Dr. Futrell recommended that plaintiff see a neurologist, and plaintiff scheduled a consult with the Johnson Neurological Clinic.

Based on the foregoing discussion, the Commission's finding of fact #2 is supported by competent evidence.

ii.) Finding #4

> 4. Mr. Branson testified that he recalls Plaintiff telling him on February 8, 2012 that his back was sore and that he would probably have to go to the doctor, but that Plaintiff did not tell him that he had injured his back or neck at work.

Plaintiff appears to challenge this finding of fact by arguing the Commission failed to address Mr. Branson's ensuing testimony that Mr. Branson: 1.) did not recall hearing plaintiff say he sustained the injury by "lifting up a tire" and 2.) he did not "know what actually occurred that day at the time." Plaintiff essentially asks us to

reweigh Mr. Branson's testimony and does not contend the finding of fact relating to Mr. Branson's testimony is unsupported by competent evidence. Notwithstanding plaintiff's impermissible contentions, our review of the record indicates that this finding is supported by Mr. Branson's testimony. *See id.* at ___, 756 S.E.2d at 119 ("[T]he findings of fact of the Industrial Commission are conclusive on appeal when supported by competent evidence, even though there may be evidence that would support findings to the contrary.").

iii.) Finding # 8

> 8. Patti Branson handles all the bookkeeping and benefits for Defendant-Employer. Despite having dealt with Mrs. Branson with regard to an earlier workers' compensation claim involving an injury to his knee on June 14, 2010, Plaintiff did not contact Mrs. Branson about his alleged February 8, 2012 back injury.

Plaintiff does not argue that finding #8 is unsupported by competent evidence. Plaintiff does not even contest that he did not contact Mrs. Branson about the alleged injury. Rather, plaintiff points to other evidence in the record to explain why he did not contact Mrs. Branson directly. Thus, this finding is binding on appeal. We also note that after reviewing the record, this finding is supported by competent evidence in the form of Mrs. Branson's testimony.

iv.) Finding #9

Plaintiff argues that a portion of the Commission's finding #9, "Plaintiff did not report any complaints of neck pain to Dr. Dumonski[,]" is not supported by competent evidence. We disagree.

Dr. Dumonski evaluated plaintiff on 10 March 2012 and testified that plaintiff "did not complain of neck pain" and any conclusion as to the causal connection between plaintiff's pain and the alleged incident on 8 February 2012 was "specific just to back pain and not neck pain[.]" He further stated, "[plaintiff] and I did not discuss his neck. I didn't get x-rays of his neck. I didn't review an MRI of his neck until just now, and . . . I've sort of been out of the loop with the treatment of his neck[.]"

Plaintiff also argues that the remaining portion of finding #9, "Plaintiff did not tell any of the doctors about his preexisting back problems, and these doctors relied on Plaintiff's inaccurate and incomplete medical history when giving their initial opinions regarding causation in this case[,]" is unsupported by competent evidence. We disagree.

As previously mentioned, Dr. Dumonski initially testified that the alleged injury on 8 February 2012 was responsible for defendant's back pain. However, he premised his medical opinion, in part, on the assumption that plaintiff had no previous back pain before that date. Defendant's attorney asked Dr. Dumonski to review Dr. Futrell's notes and Ms. Denton's testimony regarding plaintiff's treatment for prior back pain. Dr. Dumonski testified that in light of this new information he

had not previously considered, "[f]rom the standpoint of causation of his back pain that would have an impact on my thoughts regarding the causation of his back pain[.]"

Dr. Wang testified that he evaluated plaintiff on 12 March 2012 based on plaintiff's alleged work-related injury occurring on 8 February 2012. Plaintiff did not mention his previous back pain. The only information regarding the back pain, according to Dr. Wang, was provided by plaintiff because Dr. Wang did not "have any [other] information regarding his previous medical history." Dr. Wang testified that "[i]f we don't know he had any chronic problems . . . this information [is] important to be known[.]"

After evaluating plaintiff on 14 December 2012, Dr. Runheim concluded to a reasonable degree of medical certainty that more likely than not, the alleged injury of 8 February 2012 significantly contributed to plaintiff's back pain. However, he testified that he did not know plaintiff had daily back pain for two years prior to 8 February 2012. Defendants' counsel asked Dr. Runheim to look at Dr. Futrell's notes regarding plaintiff's prior treatment for back pain, and he testified that the information in Dr. Futrell's notes was different from his conversations with plaintiff because "[plaintiff] did not talk about any prior back pain with me." When asked whether the additional medical evidence added doubt to his causation conclusion, Dr. Runheim stated:

> Well, prior to this, from what I'm taking part of today, the

> only thing I've seen is nonradiating back pain previous to this injury in February 2012, and whether or not that was radicular or not–or whether that was radiculopathy or not, I have no idea. It was nonradiating, so I mean I'm just not going to comment on that because there's no way for me to know[.]

Based on the foregoing evidence, the Commission's finding of fact #9 is supported by competent evidence.

v.) Finding # 10

Plaintiff challenges finding #10, "Dr. Wang testified that his diagnosis of degenerative disc disease could correlate with Plaintiff's complaints of ongoing back pain, and that based upon the imaging studies alone, Plaintiff's complaints were 'more like a chronic process' than an acute injury." Plaintiff argues this finding is unsupported by competent evidence. We disagree.

Defendants' attorney asked Dr. Wang whether "the diagnosis of degenerative joint disease or degenerative disc disease correlate with [plaintiff]'s ongoing back pain for the last two years" and Dr. Wang replied, "[t]hat could be." With regard to plaintiff's complaints being a chronic process, Dr. Wang testified that "[i]f only based on the [MRI] imaging . . . it's more like a chronic process." Thus, Dr. Wang's testimony constitutes competent evidence to support the Commission's finding #10.

vi.) Finding #11

Plaintiff argues no competent evidence in the record exists to support the portion of the Commission's finding #11 that "Plaintiff's testimony that he sustained

an injury to his neck and back at work on February 8, 2012 is not accepted as credible." We disagree.

Plaintiff's own testimony and his answers to interrogatories, when compared with Ms. Denton's testimony and plaintiff's documented history of treatment for back problems cast doubt as to whether a work-related injury on 8 February 2012 occurred. Thus, the Commission's finding of fact with regard to plaintiff's credibility remains undisturbed.

b.) Weight to Witnesses

Next, plaintiff argues that the Commission erred by placing more weight on purported medical causation testimony of Ms. Denton over the testimony of Drs. Dumonski, Wang, and Runheim. We disagree.

Plaintiff mischaracterizes the findings related to Ms. Denton's testimony as medical causation testimony. In finding #11, the Commission stated that it did not find plaintiff's testimony credible and "places greater weight on the testimony of . . . Nurse Denton." With regard to Ms. Denton's testimony, the Commission found:

> 6. On February 9, 2012, Plaintiff sought medical treatment at Medzone, where he was seen by Martha Jo Denton, RN, a nurse practitioner. Plaintiff reported to Ms. Denton that he had suffered daily back pain for the past two years, but that it had worsened within the last two days and that he now had radiating pain down the back of his legs. Ms. Denton asked Plaintiff if his back pain occurred from a specific injury or incident. She testified that Plaintiff responded '[n]o, that he could not relate it back to a specific incident but that, you know, he did work lifting heavy tires

> all day long, but that he could not relate it back to a specific incident.' When Plaintiff returned to see Ms. Denton on February 15, 2012, he again gave no indication that his back pain was the result of an injury or specific incident at work.
> . . .
>
> 11. To the extent that Plaintiff's wife . . . and Plaintiff's life-long friend . . . testified that Plaintiff told them he was injured at work, the Full Commission places greater weight on the testimony of Mr. and Mrs. Branson and the records and testimony of Nurse Denton.

Thus, the Commission's findings related to Ms. Denton's lay testimony indicate that plaintiff failed to report that he injured his back at work on 8 February 2012. The Commission, within its discretion, placed more weight on Ms. Denton's testimony than plaintiff's wife and friend's statements that plaintiff told them he was injured at work.

Additionally, the Commission considered the expert testimony of Drs. Dumonski, Wang, and Runheim but found, based on competent evidence previously discussed, that "these doctors relied on Plaintiff's inaccurate and incomplete medical history when giving their initial opinions regarding causation in this case." As such, the Commission was free to assign as little or as much weight to the doctors' testimony in concluding that plaintiff did not sustain as an injury to his back as a result of work-related injury on 8 February 2012. *See Harrell v. J. P. Stevens & Co., Inc.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (1980) ("[T]he Commission is the sole

judge of the credibility of witnesses and may believe all or a part or none of any witness's testimony[.]"). Thus, plaintiff's argument fails.

c.) Reliance on Dr. Futrell's Testimony

Plaintiff argues the Commission erred in its finding of fact #10 by considering Dr. Futrell's purported non-competent testimony that "it was possible that the degenerative changes shown on the MRI [after 8 February 2012] were causing the back pain Plaintiff was experiencing when he treated Plaintiff in 2010 and 2011."

Assuming *arguendo* the Commission erred by considering Dr. Futrell's testimony above, any such error is not prejudicial to plaintiff. After reviewing the Commission's Opinion and Award, its decision to deny plaintiff's claim for benefits hinged on plaintiff's non-credible testimony, plaintiff's failure to disclose his prior back problems, plaintiff's failure to report a work-related injury to Ms. Denton or the Bransons, and the doctors' reliance on plaintiff's incomplete medical history.

Thus, the Commission's consideration of Dr. Futrell's testimony above was not prejudicial error because that portion of his testimony was not material to the outcome of this case. *See Estate of Gainey v. S. Flooring & Acoustical Co., Inc.*, 184 N.C. App. 497, 503, 646 S.E.2d 604, 608 (2007) ("[W]here there are sufficient findings of fact based on competent evidence to support the [tribunal's] conclusions of law, the [decision] will not be disturbed because of other erroneous findings which do not affect the conclusions.").

d.) Form 44

Plaintiff argues that defendants' challenges to the Deputy Commissioner's conclusions of law #1, #2, #3, and #5 on the Form 44 were not properly before the Commission. Plaintiff avers, purely from a procedural standpoint, that defendants' "failure to assign error with specificity, coupled with the Commission's sparse Opinion and Award, results in portions of Deputy Commissioner Ledford's original decision being binding." We disagree.

Rule 701 of the Workers' Compensation Rules of the North Carolina Industrial Commission states:

> (2) After receipt of notice of appeal, the Industrial Commission will supply to the appellant a Form 44 Application for Review upon which appellant must state the grounds for the appeal. The grounds must be stated with particularity, including the specific errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for appeal shall result in abandonment of such grounds, as provided in paragraph (3). . . .
>
> (3) Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument thereon shall not be heard before the Full Commission.

Adcox v. Clarkson Bros. Const. Co., ___ N.C. App. ___, ___, 763 S.E.2d 792, 796-97 (2014). Our Court has stressed that "the portion of Rule 701 requiring appellant to state with particularity the grounds for appeal may not be waived by the Full Commission." *Roberts v. Wal-Mart Stores, Inc.*, 173 N.C. App. 740, 744, 619 S.E.2d

907, 910 (2005). Accordingly, "the penalty for non-compliance with the particularity requirement is waiver of the grounds, and, where no grounds are stated, the appeal is abandoned." *Wade v. Carolina Brush Mfg. Co.*, 187 N.C. App. 245, 249, 652 S.E.2d 713, 715 (2007). We determine whether the Commission abused its discretion by not ruling that defendants waived issues by violating Rule 701 through our consideration of "whether the appellant provided the appellee with adequate notice of the grounds for appeal through other means such as addressing the issue in its brief to the Full Commission" and whether the Commission addressed the issues raised by appellants in its Opinion and Award. *Adcox*, ___ N.C. App. at ___, 763 S.E.2d at 798.

For the reasons set forth below, even if defendants' assignments of error in their Form 44 lacked the requisite specificity under Rule 701, the Commission did not abuse its discretion by failing to deem defendants' issues as waived. Defendants assigned error to the Deputy Commissioner's conclusions of law #1, #2, #3, and #5 in their Form 44 by stating, with respect to each challenged conclusion: "Error is assigned to Conclusion of Law No. [x], as this conclusion is contrary to law, omits salient facts, and is not adequately supported by findings of fact which are supported by the competent evidence in the Record."

The Deputy Commissioner's conclusion of law #1 states that "Plaintiff sustained an injury by accident in the form of a specific traumatic incident arising out of and in the course of his employment with the Defendant-employer[.]" Conclusion of law #2 states that "as a consequence of the accident of February 8, 2012,

Plaintiff sustained significant aggravation of his pre-existing underlying degenerative disc disease in this lower back[.] . . . [A]ll the consequences of the accident . . . are compensable[.]" Conclusion of law #3 states that "[plaintiff] is found to be a credible witness." Conclusion of law #5 entitled plaintiff to "compensation for temporary total disability" because he "met his burden of proving he is disabled due to the injury by accident[.]"

In reversing the Deputy Commissioner, the Full Commission specifically reviewed and considered "the briefs . . . of the parties[.]" As a result, the Commission concluded that "Plaintiff did not sustain an injury by accident or suffer an injury to his back as a result of a specific traumatic incident of the work assigned, on February 8, 2012[,]" "Plaintiff's claim for benefits . . . must be denied[,]" and "Plaintiff's testimony . . . is not accepted as credible." Thus, the Commission's conclusions of law directly addressed the issues raised by defendants' in their Form 44 and brief. As such, plaintiff cannot and does not contend that he received inadequate notice of defendants' grounds for appeal—the underlying consideration behind the spirit of Rule 701. Thus, plaintiff's argument fails. *See Cooper v. BHT Enterprises*, 195 N.C. App. 363, 368-69, 672 S.E.2d 748, 753 (2009) (holding that defendants "complied with Rule 701(2)'s requirement to state the grounds for appeal with particularity by timely filing their brief after giving notice of their appeal to the Full Commission" and taking into account the fact that plaintiff did not argue that defendant's Form 44 provided inadequate notice of their grounds for appeal).

e.) Findings of Fact not Challenged by Defendants

Plaintiff argues that defendants failed to properly assign error to several findings of fact made by the Deputy Commissioner in its Form 44. Accordingly, he contends that these findings are binding on appeal. We disagree.

Although we are limited to determining whether competent evidence supports the Commission's findings of fact and whether those findings support the Commission's conclusions of law, the Deputy Commissioner's Opinion and Award "is fully reviewable upon appeal to the Full Commission." *Strezinski v. City of Greensboro*, 187 N.C. App. 703, 709, 654 S.E.2d 263, 267 (2007). The Commission "may weigh the same evidence that was presented to the deputy commissioner and decide for itself the weight and credibility of that evidence." *Id.* Importantly, the Commission has the authority to "strike entirely the deputy commissioner's findings of fact even if no exception was taken to them." *Id.* Because the Commission could reject, adopt, or modify the Deputy Commissioner's findings of fact, plaintiff's argument fails.

III.) Conclusion

In sum, the challenged findings of fact are supported by competent evidence. Any error arising from the Commission's reliance on Dr. Futrell's testimony is not prejudicial. Finally, the Commission neither erred by placing more weight on Ms. Denton's testimony nor by failing to deem the Deputy Commissioner's legal

conclusions and findings of fact as binding. Accordingly, we affirm the Full Commission's Opinion and Award.

Affirmed.

Judges GEER and INMAN concur.