

NO. COA14-18

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2015

PRISILA GONZALEZ,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. X06660

TIDY MAIDS, INC.,
Employer,

ERIE INSURANCE GROUP,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 18 October 2013 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 May 2014.

The Bricio Law Firm, P.L.L.C., by Francisco J. Bricio, for plaintiff-appellee.

McAngus, Goudelock & Courie, PLLC, by Laura Carter and Cassie M. Keen, for defendants-appellants.

GEER, Judge.

Defendants Tidy Maids, Inc. and its workers' compensation insurance carrier, Erie Insurance Group, appeal an opinion and award of the Full Commission reinstating disability compensation to plaintiff Prisila Gonzalez retroactively from 1 August 2011 and

granting plaintiff's request for compensation for medical treatment related to pain in her back and her shoulder. Defendants primarily argue that they successfully rebutted the evidentiary presumption under *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 485 S.E.2d 867 (1997), which provides that a plaintiff is entitled to a presumption that her current discomfort and related medical treatment are directly related to her compensable injuries ("the *Parsons* presumption").

Because, however, defendants presented no evidence suggesting that the pain and discomfort for which plaintiff now seeks compensation is unrelated to injuries the defendants accepted as compensable in 2010, we hold that defendants have failed to rebut the *Parsons* presumption. We find defendants' remaining arguments equally unpersuasive and affirm the opinion and award.

Facts

The following facts are undisputed. Plaintiff was born 13 January 1963 and has a sixth grade education received in Mexico. She speaks only a little English. Prior to her employment as a housekeeper with Tidy Maids, plaintiff worked as a housekeeper in hotels, homes, and offices and in the kitchen of a Bojangles.

On 10 September 2010, plaintiff was involved in a car accident while traveling from Tidy Maids' office to a job site. She sustained injuries to her head, neck, back, and right shoulder,

and she suffered headaches and vertigo. On 29 September 2010, plaintiff gave notice of her injuries to her employer by filing a Form 18 "Notice of Accident." On 13 October 2010, defendants filed a Form 63, "Notice to Employee of Payment of Compensation Without Prejudice." Defendants commenced paying compensation at \$155.00 per week beginning 13 September 2010. Plaintiff has not worked since the accident.

On 1 August 2011, defendants filed a Form 24, "Application to Terminate or Suspend Payment of Compensation," alleging that "plaintiff is no longer disabled . . . as she has no restrictions on her ability to work at this time." On 7 November 2011, a special deputy commissioner granted defendants' Form 24 request, and defendants immediately ceased payments to plaintiff. On 10 January 2012, plaintiff filed a Form 33, "Request that Claim be Assigned for Hearing." On 19 January 2012, defendants filed a Form 33R, "Response to Request that Claim be Assigned for Hearing," arguing that plaintiff's claim should not be heard because the Form 33 request was untimely. Nonetheless, plaintiff's claim was heard before a deputy commissioner on 3 April 2012.

On 16 July 2012, plaintiff filed a Form 23, "Application for Reinstatement of Disability Compensation." The deputy commissioner granted defendants' Form 24 request and denied plaintiff's Form 23 request in an opinion and award filed 15

February 2013. Plaintiff appealed the deputy commissioner's decision to the Full Commission.

The Full Commission entered an opinion and award reversing the deputy commissioner's decision and entering an award in plaintiff's favor. The Full Commission's opinion and award made the following findings of fact. Plaintiff was injured in a car accident "while on the job" for defendant Tidy Maids on 10 September 2010.

Plaintiff first sought treatment, in September 2010, from Dr. Jeffrey Gerdes, a chiropractor, for neck pain, right shoulder pain with numbness to the right elbow, mid and low back pain, and headaches. Subsequently, in October 2010, she began receiving treatment from Dr. Kapil Rawal, a neurologist, upon referral from the defendant carrier. At that time, plaintiff complained of neck pain, back pain, pain from the shoulder down into the right arm, pain in the right leg, and headaches associated with stabbing pain, nausea, and vomiting on occasions. Dr. Rawal diagnosed plaintiff with neck sprain/strain, lumbar sprain/strain, post traumatic headache, dizziness, insomnia, and thoracic sprain/strain.

On 13 October 2010, defendants filed a Form 63 and began making payments to plaintiff without prejudice for the September 2010 accident, acknowledging that plaintiff's injuries included "'neck, back, headache, vertigo, [and] rt [sic] shoulder.'"

However, defendants subsequently failed to file a Form 61 denying the compensability of plaintiff's claim. As a result, the Commission found, plaintiff's claim "is deemed accepted."

Between 13 October 2010 and 1 August 2011, plaintiff not only saw Dr. Rawal for her back pain, but also, in May 2011, she was evaluated by Dr. Gary Smoot at Cary Orthopedics for lumbar pain. Dr. Smoot performed a physical exam and diagnosed plaintiff as having lumbar sprain and possible discogenic pain. Dr. Rawal kept plaintiff out of work from 27 October 2010 to mid-December 2010, and then from 19 January 2011 to mid-February 2011.

For problems with her shoulder, plaintiff received treatment from Dr. Brian Szura beginning in March 2011. Dr. Szura diagnosed plaintiff with having a "right rotator cuff strain with a possible tear[,] " as well as "some AC joint arthritis." Dr. Szura restricted plaintiff's use of her right arm but, in June 2011, he noted "maximum medical improvement" and released her to full duty work with respect to her shoulder.

On 12 May 2011, when plaintiff saw Dr. Rawal, he took her out of work for another week and restricted her to light duty work of "lifting no more than five (5) pounds . . . for a period of six (6) weeks[,] " beginning 23 May 2011. Dr. Rawal testified at his deposition that these light duty work restrictions were not intended to be indefinite.

Dr. Smoot did not treat plaintiff or impose work restrictions because he did not have enough information "'to figure out what was going on.'" Although plaintiff went to a follow-up appointment with Dr. Smoot on 8 June 2011, plaintiff and a nurse had a disagreement, and plaintiff left without seeing Dr. Smoot. Plaintiff did not see Dr. Smoot again after that appointment.

Plaintiff saw Dr. Rawal again on 10 May 2012, complaining of "severe low back pain, headaches, and right arm pain." Dr. Rawal diagnosed plaintiff with "lumbar sprain/strain, neck sprain/strain, post-traumatic stress headache, and dizziness" and kept plaintiff out of work for at least six weeks. The Full Commission further found that Dr. Rawal had testified that plaintiff's continuing back pain was caused by one of three possible conditions: "(1) the L1-2 floating disc herniation, (2) the L5-S1 disc bulge, or (3) the back sprain." In addition, the Commission found, Dr. Rawal expressed his opinion that given the mechanism of injury and findings from an MRI scan, there were likely two underlying pathologies of the pain: (1) the lumbar sprain, and (2) the radiculopathy because of an eccentric disc bulge.

The Commission then concluded that plaintiff was entitled, under *Parsons*, to a presumption that her current back and shoulder conditions were causally related to her compensable injury. The

Commission further concluded that defendants had failed to offer any competent medical evidence that plaintiff's present back and shoulder pain were unrelated to her compensable injury and, therefore, defendants had failed to rebut the presumption that her current conditions were related to her compensable accident. Accordingly, the Commission determined that plaintiff was entitled to further medical treatment for her current back and shoulder conditions. With respect to plaintiff's right shoulder, the Commission also granted plaintiff's request for a second opinion.

Further, the Full Commission found sufficient evidence under *Russell v. Lowes Prod. Distribution*, 108 N.C. App. 762, 425 S.E.2d 454 (1993), that plaintiff was disabled from 1 August 2011 through 9 May 2012 and that "Plaintiff . . . conducted a reasonable job search but was unsuccessful in finding employment" According to the Commission, plaintiff also met her burden under *Russell* of showing that she had been disabled since 10 May 2012 because "Plaintiff has been completely written out of work since May 10, 2012 by Dr. Rawal." The Commission noted further that "Defendants offered no evidence to contradict Dr. Rawal's opinion that Plaintiff was unable to work as of May 10, 2012."

The Full Commission, therefore, concluded (1) that the special deputy commissioner had improvidently granted defendants' Form 24 request, (2) that plaintiff was entitled "to receive

medical treatment [for her current conditions] that may reasonably be required to effect a cure, give relief, or tend to lessen Plaintiff's period of disability[,] " (3) that plaintiff was "entitled to a second opinion regarding her ongoing right shoulder pain[,] " and (4) that plaintiff was entitled to reinstatement of her disability compensation, including compensation from 1 August 2011 and continuing until plaintiff returns to work or further order of the Commission. Defendants timely appealed to this Court.

Discussion

"Appellate review of an order and award of the Industrial Commission is limited to a determination of whether the findings of the Commission are supported by the evidence and whether the findings in turn support the legal conclusions of the Commission.'" *Allred v. Exceptional Landscapes, Inc.*, ___ N.C. App. ___, ___, 743 S.E.2d 48, 51 (2013) (quoting *Simon v. Triangle Materials, Inc.*, 106 N.C. App. 39, 41, 415 S.E.2d 105, 106 (1992)). The Industrial Commission "is the sole judge of the credibility of the witnesses and the weight of the evidence[.]" *Hassell v. Onslow Cnty. Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008), and therefore "[t]he Commission's findings of fact are conclusive on appeal if supported by competent evidence 'notwithstanding evidence that might support a contrary finding.'" *Reaves v. Indus. Pump Serv.*, 195 N.C. App. 31, 34, 671 S.E.2d 14, 17 (2009) (quoting

Hobbs v. Clean Control Corp., 154 N.C. App. 433, 435, 571 S.E.2d 860, 862 (2002)). "Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal." *Allred*, ___ N.C. App. at ___, 743 S.E.2d at 51. "The Commission's conclusions of law are reviewable *de novo*." *Id.* at ___, 743 S.E.2d at 51.

I

We first address defendants' contention that the Full Commission erred in determining that plaintiff timely appealed the special deputy commissioner's administrative order approving defendants' Form 24 request to terminate payment of benefits. The Full Commission found that plaintiff actually received the administrative order on 10 January 2012 and, therefore, her appeal, filed the same date, was timely. Although the finding of fact regarding the date plaintiff received the order is included within a conclusion of law, we still treat it as a finding of fact. See *Davidson v. Univ. of N.C. at Chapel Hill*, 142 N.C. App. 544, 552, 543 S.E.2d 920, 925 (2001) ("The Commission's designation of a finding as either a 'finding of fact' or a 'conclusion of law' is not conclusive.").

Defendants argue that this finding of fact is erroneous because it "is based solely on plaintiff's testimony" and disregards defendants' evidence of a printout of the United States

Postal Service website showing that the parcel was delivered to plaintiff's address in August 2011. However, the Commission expressly acknowledged that the Commission file included a U.S. Postal Service receipt and tracking number and that a printout from the web site of the Postal Service showed delivery of the mail piece in zip code 27511 in August 2011. Nonetheless, the Commission further found that a copy of the green card -- which was missing from the Commission file -- would have shown "the individual who received the mail with the tracking number identified, the address where it was delivered, and the date delivered." The Commission further found that defendants did not receive a copy of the administrative decision and order until 7 November 2011.

The Commission then concluded that in the absence of a green card and given the date defendants received the decision, "insufficient evidence exists to determine if then *Pro Se* Plaintiff received the Order" prior to 10 January 2012, the date when the Commission emailed the decision to plaintiff's newly-retained counsel. In arguing that the Commission should have concluded that plaintiff's appeal was untimely based on the Postal Service's website, defendants have cited no authority suggesting that the Postal Service tracking printout is conclusive regarding a party's receipt of an order.

Since plaintiff's evidence is competent to support the Commission's finding that she received the administrative order on 10 January 2012, and only the Commission may determine the weight and credibility of the evidence, we are compelled to uphold the Commission's determination that plaintiff's appeal was timely. *See Gonzalez v. Worrell*, 221 N.C. App. 351, 355, 728 S.E.2d 13, 16 (2012) (concluding that, although delivery status based on tracking number showed that notice of insurance policy cancellation was delivered, lack of signed green card from intended recipient supported conclusion that service of notice was not completed), *aff'd per curiam*, 366 N.C. 501, 739 S.E.2d 552 (2013); *Goodson v. Goodson*, 145 N.C. App. 356, 363, 551 S.E.2d 200, 205 (2001) (holding party's testimony that she did not receive notice of judicial sale was "competent evidence to support [the trial court's] finding that notice was not given").

II

Defendants next argue that the Full Commission erred in concluding that defendants did not successfully rebut the presumption that plaintiff's current condition is directly related to the compensable injuries she suffered in the September 2010 accident. Defendants do not now contest the compensability of the September 2010 accident. Therefore, "plaintiff was entitled to seek compensation for such injuries as resulted from that

accident." *Erickson v. Lear Siegler*, 195 N.C. App. 513, 521, 672 S.E.2d 772, 777 (2009). The Commission noted that the parties stipulated that because defendants filed a Form 63 and commenced payment of compensation without prejudice, but subsequently failed to file a Form 61 denying compensability, they accepted plaintiff's claim for "neck, back, headache, vertigo, rt [sic] shoulder" injuries.

In *Parsons*, this Court explained that once a plaintiff establishes her injuries are compensable, "[l]ogically, defendants [then] have the responsibility to prove the original finding of compensable injury is unrelated to her present discomfort. To require plaintiff to re-prove causation each time she seeks treatment for the very injury that the Commission has previously determined to be the result of a compensable accident is unjust and violates our duty to interpret the Act in favor of injured employees." 126 N.C. App. at 542, 485 S.E.2d at 869. Therefore, "[i]f additional medical treatment [for the compensable injury] is required, there arises a rebuttable presumption that the treatment is directly related to the original compensable injury and the employer has the burden of producing evidence showing the treatment is not directly related to the compensable injury." *Reininger v. Prestige Fabricators, Inc.*, 136 N.C. App. 255, 259, 523 S.E.2d 720, 723 (1999).

It is unclear from defendants' brief whether they contend that the *Parsons* presumption does not apply when a defendant is deemed to have accepted a claim. However, in an unpublished decision, *Williams v. Law Cos. Grp.*, 204 N.C. App. 212, 694 S.E.2d 522, 2010 WL 1957919, at *11, 2010 N.C. App. LEXIS 829, at *29-30 (2010), this Court applied the *Parsons* presumption when, as in this case, a defendant employer filed a Form 63 following the plaintiff's accident but failed to contest the compensability of the plaintiff's injuries within the 90-day statutory period set forth in N.C. Gen. Stat. § 97-18(d) (2009). *Williams* concluded that under those circumstances, the plaintiff "was entitled to a presumption that her medical treatment was related to her compensable injury." *Id.*, 2010 WL 1957919, at *11, 2010 N.C. App. LEXIS 829, at *30.

Although *Williams* is not a published decision, we find its reasoning persuasive and hold that when, as here, a defendant pays a plaintiff pursuant to a Form 63 and never denies the plaintiff's claim, the plaintiff is entitled to rely upon the *Parsons* presumption. Consequently, because defendants in this case filed a Form 63 acknowledging injuries to plaintiff's "neck, back, . . . [and] r[ight] shoulder" and failed to timely contest the compensability of any portion of plaintiff's claim, the Commission

correctly concluded that the *Parsons* presumption applied with respect to those injuries.

Defendants, therefore, bore the burden of showing that plaintiff's current claims regarding her back and right shoulder are not related to her compensable injuries. See *Perez v. Am. Airlines/AMR Corp.*, 174 N.C. App. 128, 136 n.1, 620 S.E.2d 288, 293 n.1 (2005) ("We can conceive of a situation where an employee seeks medical compensation for symptoms completely unrelated to the compensable injury. But the burden of rebutting the presumption of compensability in this situation, although slight, would still be upon the employer.").

Defendants argue that they "rebutted any presumption of compensability with regard to medical treatment for plaintiff's back and shoulder" because "[n]one of plaintiff's physicians provided an opinion to a reasonable degree of medical certainty, or even to a preponderance of the evidence, that plaintiff's current pain and restrictions are causally related to the automobile accident of September 10, 2010." With respect to plaintiff's back pain, they point to testimony from Dr. Rawal that they contend merely established a "temporal connection between [the] accident and the onset of symptoms [which] is not competent evidence of causation[.]" See *Cooper v. BHT Enters.*, 195 N.C. App. 363, 372, 672 S.E.2d 748, 756 (2009) (explaining evidence

showing at most that onset of symptoms coincided with accident is "'inconclusive as to [the] proximate cause'" of a controversial medical condition (quoting *Young v. Hickory Bus. Furniture*, 353 N.C. 227, 232, 538 S.E.2d 912, 916 (2000))).

However, defendants' argument is simply a claim that they have rebutted the *Parsons* presumption -- which relieves a plaintiff of the burden of proving causation -- by showing that plaintiff has failed to prove causation. Since defendants accepted as compensable plaintiffs' claim for injuries to her back, under *Parsons*, medical causation is presumed, and defendants bore the burden of showing that plaintiff's current back complaints were unrelated to her initial back injury. Defendants misconstrue their burden by overlooking the reasoning behind the *Parsons* presumption, which is to avoid the injustice of requiring a plaintiff to reprove the causation of a compensable injury each time she seeks additional treatment for it. 126 N.C. App. at 542, 485 S.E.2d at 869.

Because the *Parsons* presumption applies to plaintiff's current pain here, defendants needed to present "expert testimony or affirmative medical evidence tending to show that the treatment [plaintiff seeks] is not directly related to the compensable injury[.]" *Perez*, 174 N.C. App. at 137, 620 S.E.2d at 293. The testimony from Dr. Rawal that defendants point to, at best, merely

establishes that plaintiff's current symptoms might not be related to her compensable injuries. Further, in their own brief, defendants point to testimony from Dr. Rawal "'[t]hat the pain syndrome that [plaintiff] is suffering with *is a consequence of the trauma [of the September 2010 accident].*" (Emphasis added.)

The Commission properly concluded that this evidence is insufficient to rebut the *Parsons* presumption. See *McLeod v. Wal-Mart Stores, Inc.*, 208 N.C. App. 555, 559, 703 S.E.2d 471, 475 (2010) ("[Doctor's] statements as to 'some correlation' do not satisfy defendants' burden of showing 'that the medical treatment is not directly related to the compensable injury.'" (quoting *Perez*, 174 N.C. App. at 135, 620 S.E.2d at 292)); *Perez*, 174 N.C. App. at 137, 620 S.E.2d at 293, 294 (holding defendant failed to rebut *Parsons* presumption when it relied upon either "equivocal" medical testimony or medical testimony that "it was impossible to say" plaintiff's current back problems were related to compensable injuries from original accident, and medical expert admitted to possibility that current symptoms were related to original injuries).

Nonetheless, defendants contend that they rebutted the *Parsons* presumption with testimony from Dr. Smoot who, defendants assert, testified that plaintiff's current pain has a psychological cause. However, even assuming without deciding that

this testimony could adequately show that plaintiff's current symptoms are unrelated to her original compensable back injuries, the Commission discredited this testimony, as it was entitled to do. Dr. Smoot admitted in his deposition that he did not have all of plaintiff's medical records and that he only saw plaintiff one time, whereas Dr. Rawal saw plaintiff multiple times. The Commission noted that Dr. Smoot testified that he needed additional information including information on plaintiff's medications and previous medical records and that he did not assign any work restriction because "'he didn't have enough information to go on to figure out what was going on.'"

Because the question of Dr. Smoot's credibility was a question solely for the Commission to decide, and because defendants have otherwise failed to point to any evidence showing that plaintiff's current back pain is unrelated to the compensable injuries from her September 2010 car accident, we hold that the Full Commission did not err in concluding that the treatment plaintiff seeks for her current back pain is directly related to her compensable injuries.

We also note that while defendants purport to challenge the Commission's presumption that plaintiff's current shoulder pain is causally related to her compensable injuries, defendants have pointed to no record evidence whatsoever in support of this

contention. In this regard, we conclude that defendants have failed to meet their burden on appeal challenging this finding. See *State v. Adams*, 335 N.C. 401, 409, 439 S.E.2d 760, 764 (1994) ("[I]t is the *appellant* who has the burden in the first instance of demonstrating error from the record on appeal.").

III

Defendants next challenge the Commission's conclusions regarding plaintiff's disability. Establishing disability is a separate question from establishing the compensability of an injury and "admitting compensability and liability . . . does not create a presumption of continuing disability[.]" *Sims v. Charmes/Arby's Roast Beef*, 142 N.C. App. 154, 159-60, 542 S.E.2d 277, 281-82 (2001).

Under *Russell*, 108 N.C. App. at 765, 425 S.E.2d at 457 (internal citations omitted), an employee can establish disability in one of four ways:

- (1) the production of medical evidence that [s]he is physically or mentally, as a consequence of the work related injury, incapable of work in any employment;
- (2) the production of evidence that [s]he is capable of some work, but that [s]he has, after a reasonable effort on [her] part, been unsuccessful in [her] effort to obtain employment;
- (3) the production of evidence that [s]he is capable of some work but that it would be futile because of preexisting conditions, i.e., age, inexperience, lack of education, to seek other employment; or
- (4)

the production of evidence that [s]he has obtained other employment at a wage less than that earned prior to the injury.

Defendants first contend that the Commission erred in concluding that plaintiff met her burden of proving that she was disabled from 1 August 2011 to 9 May 2012 through production of evidence under the second *Russell* option. The Commission determined that plaintiff "conducted a reasonable job search but was unsuccessful in finding employment from August 1, 2011 through May 9, 2012 despite being under a five (5) pound lifting restriction by Dr. Rawal."

Defendants first argue that the "greater weight of the evidence" established that plaintiff had been released to return to full duty work by 4 July 2011. Although Dr. Rawal, on 12 May 2011, had limited plaintiff to light duty work with a five pound lifting restriction and no pushing, pulling, bending, or stooping, defendants point out that this restriction was only supposed to last six weeks, and, further, the Commission found that Dr. Rawal did not intend for his restrictions to be indefinite. Plaintiff did not, however, return to see Dr. Rawal until 10 May 2012, so he never actually lifted the work restriction. Further, Dr. Rawal testified that when he saw defendant again on 10 May 2012, his clinical findings were substantially unchanged from when he saw plaintiff on 12 May 2011. Dr. Rawal expressed his opinion that it

would have been unlikely that between May 2011 and May 2012 plaintiff would have been without work restrictions. This evidence supports the Commission's finding that plaintiff was "under a five (5) pound lifting restriction by Dr. Rawal" during the 1 August 2011 to 9 May 2012 time period. Thus, while plaintiff was capable of some work, she was under work restrictions.

Defendants next challenge the Commission's conclusion that plaintiff showed that she had, after a reasonable effort on her part, been unsuccessful in her effort to obtain employment, as required by the second *Russell* method of proof. The Commission, in support of its determination, relied upon plaintiff's testimony that notwithstanding her ongoing pain, she had completed multiple job applications with several employers including, but not limited to, Bojangles, Burger King, Chick-fil-a, Life Centers (a nursing home), Comfort Suites, Golden Corral, and Netcom Hospitality, but she had not received any job offers. Defendants acknowledge that plaintiff's evidence indicates that she applied for 17 positions with 14 employers between 20 December 2011 and 24 March 2012.

Defendants argue that given plaintiff's evidence, the Commission was required to conclude that she had not made a reasonable effort to try to find employment. However, no general rule exists for determining the reasonableness of an injured employee's job search. Rather, "[t]he Commission [is] free to

decide" whether an employee "made a reasonable effort to obtain employment under the second *Russell* option" so long as the determination is supported by competent evidence. *Perkins v. U.S. Airways*, 177 N.C. App. 205, 214, 628 S.E.2d 402, 408 (2006). The Commission was free to find that plaintiff's job search was reasonable based on the Commission's finding that plaintiff submitted multiple job applications despite ongoing pain.

Defendants nonetheless contend the holding in *Russell* is controlling. In *Russell*, the Commission concluded that the plaintiff had *not* made a reasonable effort to find employment even though the plaintiff testified "that he made seven or eight job applications and was refused employment in each instance." 108 N.C. App. at 766, 425 S.E.2d at 457. However, the Commission in *Russell* also found the plaintiff's testimony "not credible on the grounds that *Russell* 'was unable to name the exact names of employers to whom he had made application nor the dates upon which he had made application nor for what jobs he had applied[.]'" *Id.* Here, on the other hand, the Commission found plaintiff's testimony concerning her job applications credible.

Defendants also contend, citing *Hooker v. Stokes-Reynolds Hosp.*, 161 N.C. App. 111, 587 S.E.2d 440 (2003), that plaintiff was required to contact two potential employers per week over the 39 weeks she did not work from 1 August 2011 to 9 May 2012, which

would result in a required total of 78 possible job contacts. In *Hooker*, the plaintiff testified that the North Carolina Employment Security Commission ("NCESC") required her to "conduct at least two in-person contacts with different employers on different days each week." *Id.* at 117, 587 S.E.2d at 445. This Court upheld the Commission's determination that the plaintiff had made reasonable but unsuccessful efforts to obtain employment because she complied with the NCESC's requirements for receiving unemployment benefits over a period of at least three and a half months. *Id.* at 116-17, 587 S.E.2d at 444-45.

Contrary to defendant's assertion, however, *Hooker* does not stand for the proposition that failure to comply with the NCESC's regulations for obtaining unemployment benefits means an injured employee has not conducted a reasonable search for employment. Indeed, in the past, this Court has not required such exacting evidence to be presented for the Commission to find a reasonable job search under *Russell*. See, e.g., *White v. Weyerhaeuser Co.*, 167 N.C. App. 658, 664, 672, 606 S.E.2d 389, 395, 399 (2005) (holding Commission's finding that plaintiff had "'made reasonable efforts to find suitable employment'" binding on appeal where evidence was that "[a]fter [the plaintiff] resigned . . . [f]or approximately five months, [he] applied for various jobs, both directly and through the Employment Security Commission").

Because competent evidence supports the Commission's findings that plaintiff was under partial disability from 1 August 2011 to 9 May 2012 and, despite her ongoing pain, made a reasonable but unsuccessful job search during that time, we hold that the Commission did not err in concluding plaintiff had met her burden under the second *Russell* option in establishing her disability during that period caused by her compensable injury. See, e.g., *Philbeck v. Univ. of Mich.*, ___ N.C. App. ___, ___, 761 S.E.2d 668, 675 (2014) (upholding Commission's conclusion that plaintiff was disabled under second prong of *Russell* based on plaintiff's testimony regarding her job search, her ongoing pain, and her range-of-motion limitations after being released to work).

Defendants next contend that plaintiff did not meet her burden of establishing her disability since 10 May 2012 under the first *Russell* method of proof. Defendants do not contest the finding that "Plaintiff has been completely written out of work since May 10, 2012 by Dr. Rawal" which is, therefore, binding on appeal. Defendants rely exclusively on their contention that since they rebutted the *Parsons* presumption, the Commission should have concluded that plaintiff failed to prove that her disability was caused by her compensable injury. Because we have already upheld the Commission's conclusion that defendants failed to rebut the *Parsons* presumption, we hold that the Commission did not err in

its conclusion that plaintiff has been totally disabled since 10 May 2012. Consequently, we affirm the Commission's opinion and award.

Affirmed.

Judges BRYANT and CALABRIA concur.