IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-310

Filed: 5 April 2016

North Carolina Industrial Commission, No. 661260

WALTER STEVENS, Employee, Plaintiff,

v.

UNITED STATES COLD STORAGE, INC., Employer, N.C. INSURANCE GUARANTY ASSOCIATION, Carrier, Defendants.

Appeal by defendants from opinion and award entered on 30 December 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals on 9 September 2015.

*Smith, James, Rowlett & Cohen, L.L.P., by Margaret Rowlett, for plaintiff-appellee.*

*McAngus, Goudelock & Courie, P.L.L.C, by Laura Carter and Cassie M. Keen, for defendant-appellants.*

STROUD, Judge.

This is the third appeal in this case; our last opinion reversed and remanded to the Full Commission to "determine whether [Walter Stevens ("plaintiff")] is totally and permanently disabled by reason of his psychiatric or psychological condition, considered separate and apart from the other components of his work-related injury." *See Stevens v. United States Cold Storage, Inc.*, 230 N.C. App. 412, 753 S.E.2d 398,

slip op. at 22-23 (2013) (unpublished) ("*Stevens II*"), *disc. review denied*, 367 N.C. 329, 755 S.E.2d 609 (2014). United States Cold Storage, Inc. and N.C. Insurance Guaranty Association ("defendants") appeal from the Full Commission's opinion and award entered on remand, which awarded plaintiff both total and permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 (2013) and scheduled benefits pursuant to N.C. Gen. Stat. § 97-31 (2013). Defendants argue that on remand the Full Commission erred in (1) denying their motion to reopen the evidence; and (2) finding that plaintiff is totally and permanently disabled due solely to his compensable psychological condition and thus concluding that plaintiff is entitled to both total and permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 and scheduled benefits pursuant to N.C. Gen. Stat. § 97-31. We affirm.

## I. Background

Our last opinion set forth much of the extensive factual and procedural background of this case:

> I. Factual Background
> A. Substantive Facts
> 1. Nature of Plaintiff's Initial Injury
>
> Plaintiff, who is now in his late fifties and who had worked as a truck driver for twenty-five years, was employed as a truck driver by Defendant United States Cold Storage, Inc.[1] On 18 March 1996, while attempting to pull a tarp over the load in his truck, Plaintiff sustained

[1] This Court added a footnote here that "Plaintiff was actually employed by Jack Gray Transport, Defendant United States Cold Storage's predecessor, at the time of his injury." *Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 2 n.1.

a compensable injury by accident to his lower back and began receiving temporary total disability compensation. In the fifteen years since his injury, Plaintiff has only been able to work for two months and continues to suffer from back pain which radiates into his legs, daily groin pain, and other conditions.

2. Analysis of Plaintiff's Injuries
a. Plaintiff's Back Injury

Although Plaintiff returned to work a short time after his injury, he could not continue to work and resumed receiving temporary total disability payments as the result of his ongoing back pain. During May of 1996 and July of 1998, Plaintiff underwent a number of surgical procedures which were intended to address the lower back problems from which he continued to suffer. In March 1999, Dr. Charles Branch of Wake Forest University Baptist Hospital allowed Plaintiff to return to work subject to certain restrictions deemed appropriate as the result of a functional capacity evaluation.

On 16 June 2005, Plaintiff saw Dr. Edward Hanley of CMC Orthopaedics in order to obtain an evaluation of his continuing back pain. At that time, Dr. Hanley concluded that Plaintiff exhibited signs of disc degeneration just above the site of a previous procedure and recommended that Plaintiff's fusion be extended to the site of the new degenerative condition. On 5 February 2007, Dr. Hanley performed the recommended fusion procedure. On 16 April 2008, Dr. Hanley surgically removed a pedicle screw from the area affected by the 5 February 2007 procedure in an attempt to relieve the pain that Plaintiff was continuing to experience. On 11 September 2008, Dr. Hanley determined that Plaintiff's back had reached maximum medical improvement and concluded that Plaintiff had a 30% permanent back disability. As of the date of the evidentiary proceedings before the Commission, Dr. Hanley believed that Plaintiff was unable to work and would be unable to resume working for the foreseeable future.

b. Plaintiff's Foot Injury

In June 2005, Plaintiff began receiving treatment for left foot pain. On 20 June 2008, Dr. Robert Anderson of OrthoCarolina determined that Plaintiff had reached maximum medical improvement and that he had a 60% permanent impairment of his left foot.

c. Plaintiff's Erectile Dysfunction and Groin Injury

In 1998, Plaintiff began receiving treatment from Dr. Paul Coughlin of Piedmont Urological Associates for erectile dysfunction, a condition which, according to Dr. Coughlin, resulted from Plaintiff's work-related back injury. In 2002, Dr. Coughlin performed a successful penile implant procedure. After Plaintiff complained of increasing right groin pain on 11 March 2009, Dr. Coughlin noted tenderness consistent with nerve entrapment and nerve root irritation in that region. On 18 May 2009, Dr. Coughlin performed an exploratory procedure during which he discovered and released extensive scar tissue in an effort to provide Plaintiff with relief from his pain.

As of 31 December 2009, Plaintiff reported improvement in his right groin pain. According to Dr. Coughlin, Plaintiff has reached maximum medical improvement for his erectile dysfunction. Although Plaintiff's penile implant was purportedly successful, evidence indicated that injuries associated with erectile dysfunction can be emotionally devastating, particularly to a man of Plaintiff's age. Similarly, although Dr. Coughlin believed that Plaintiff had reached maximum medical improvement for his right groin injury, he opined that Plaintiff would need ongoing treatment for this condition.

d. Plaintiff's Psychiatric and Psychological Condition

On 22 February 2005, Plaintiff consulted with Dr. Marlene Brogan of North Carolina Neuropsychiatry concerning his mental condition, which the Commission

described as "major depression with anxiety." At that time, Plaintiff reported "a drop in concentration, poor mood, poor energy, and fragmented sleep." Plaintiff remained under Dr. Brogan's care until 16 May 2005, at which point she determined that Plaintiff had reached maximum medical improvement.

On 29 June 2007, Plaintiff came under the care of Dr. John Barkenbus of North Carolina Neuropsychiatry, who diagnosed Plaintiff as suffering from depression and dyspepsia. On 28 September 2009, Dr. Barkenbus noted no change in Plaintiff's depression and reported that Plaintiff did not believe that he could ever return to work. As the result of testing performed on 30 November 2009, Dr. Barkenbus concluded that Plaintiff's depression and anxiety were disabling, resulting in "a marked interference with concentration and pace, social functioning, and interpersonal stress tolerance." In addition, Dr. Barkenbus concluded in 2009 that, despite five years of treatment, Plaintiff's depression and anxiety symptoms were "disabling"; that these conditions interfered with his "concentration and pace, social functioning, and interpersonal stress tolerance"; and that Plaintiff's symptoms had persisted despite five years of treatment with medication and intermittent counseling. According to Dr. Barkenbus, Plaintiff continues to suffer from chronic leg and back pain, depression, and anxiety; would, as the result of his psychological condition, have difficulty with any vocational retraining; and remains, and likely will remain, unable to work.

e. Plaintiff's Chronic Pain

On 10 November 1999, Plaintiff came under the treatment of Dr. T. Kern Carlton, who provided pain management care. In November 1999, Dr. Carlton recommended that Plaintiff obtain the assistance of a vocational rehabilitation professional. After working with Plaintiff from May 2003 until December 2006 and after noting that Plaintiff had failed to obtain employment, Bernard Moore, a certified rehabilitation counselor,

concluded that Plaintiff was "unable to return to work as a result of his physical and neuropsychological conditions." Similarly, Dr. Carlton believed that Plaintiff's chronic pain had reached the point of maximum medical improvement and that Plaintiff did not have the ability to return to work.

B. Procedural Facts

On 15 January 1997, Plaintiff filed a Form 18 notifying Defendant United States Cold Storage that he had suffered a work-related injury. On 18 March 1998, Defendants filed a Form 19 admitting the compensability of Plaintiff's injury. On 26 February 1998, Plaintiff and Defendants filed a Form 21 acknowledging the compensability of Plaintiff's injury and providing that Plaintiff would receive $356.56 in weekly compensation benefits. On 15 November 2006, Deputy Commissioner Chrystal Redding Stanback entered an order granting Plaintiff's request that Defendants be ordered to pay for a surgical procedure to be performed by Dr. Hanley.

On 27 March 2009, Defendants filed a Form 33 requesting that a hearing be held for the purpose of determining the extent of Plaintiff's disability. On 27 September 2010, Deputy Commissioner Kim Ledford entered an order determining that Plaintiff remained totally incapacitated, that Plaintiff had reached maximum medical improvement, that Plaintiff was entitled to ongoing medical treatment for his work-related injuries and to reimbursement for certain mileage and hotel expenses, that Plaintiff was entitled to receive weekly temporary total disability compensation in the amount of $356.56 for the remainder of his lifetime, and that Plaintiff's request for an award of attorney's fees pursuant to N.C. Gen. Stat. § 97-88.1 should be denied.

On 7 October 2010, Plaintiff noted an appeal from Deputy Commissioner Ledford's order to the Commission. On 2 May 2011, the Commission entered an order by Commissioner Linda Cheatham, which was joined by Commissioners Staci T. Meyer and Christopher Scott, affirming Deputy Commissioner Ledford's order with

minor modifications. Plaintiff noted an appeal to this Court from the Commission's order.

On 17 July 2012, this Court filed an opinion affirming the Commission's order in part and reversing and remanding the Commission's order in part. In response to Plaintiff's contention that "the Commission erred in failing to allow plaintiff to elect compensation for both total incapacity under N.C. Gen. Stat. § 97-29 and scheduled injury under N.C. Gen. Stat. § 97-31," we noted that, although " 'the general rule is that stacking of benefits covering the same injury for the same time period is prohibited,' " "our Supreme Court has held that recovery under both N.C. Gen. Stat. §§ 97-29 and 97-31 is available under certain circumstances," since "an employee may be compensated for both a scheduled compensable injury under N.C. Gen. Stat. § 97-31 and total incapacity for work under N.C. Gen. Stat. § 97-29 'when the total incapacity is caused by a psychiatric disorder brought on by the scheduled injury.' " [*Stevens v. U.S. Cold Storage, Inc.*, 221 N.C. App. 672, 729 S.E.2d 128, slip op. at 3-4 (2012) (unpublished) ("*Stevens I*")] (quoting *Dishmond v. Int'l Paper Co.*, 132 N.C. App. 576, 577, 512 S.E.2d 771, 772, *disc. review denied*, 350 N.C. 828, 537 S.E.2d 820 (1999), and *Hill v. Hanes Corp.*, 319 N.C. 167, 174, 353 S.E.2d 392, 397 (1987)). "The reason for this exception is that psychological injuries are not covered by the schedule in N.C. Gen. Stat. § 97-31 and therefore are compensable, if at all, under N.C. Gen. Stat. § 97-29 or N.C. Gen. Stat. § 97-30." [*Stevens I*, 221 N.C. App. 672, 729 S.E.2d 128, slip op. at 4-5] (citing *McLean v. Eaton Corp.*, 125 N.C. App. 391, 395, 481 S.E.2d 289, 291 (1997)). As a result, we noted that this Court held in *McLean*, in which "the plaintiff suffered hand injuries, major depressive disorder, and post-traumatic stress disorder," that the plaintiff " 'should be given the opportunity to elect the section or sections which provides him with the best monetary remedy' " and that " 'any recovery the plaintiff obtained under N.C. Gen. Stat. § 97-29 or 97-30 may be in addition to any recovery he elected to receive under N.C. Gen. Stat. § 97-31 for the scheduled injury.' " [*Stevens I*, 221 N.C. App. 672, 729

S.E.2d 128, slip op. at 5-6] (quoting *McLean*, 125 N.C. App. at 392-95, 481 S.E.2d at 290-91). After noting that, "in the instant case, plaintiff suffered a scheduled back injury, which was rated at 30% permanent impairment" and that Dr. Barkenbus had "diagnosed plaintiff with depression and dyspepsia" which would have made vocational training difficult for Plaintiff, we held that this case should be remanded to the Commission for "findings and conclusions as to whether N.C. Gen. Stat. § 97-29 or N.C. Gen. Stat. § 97-31 would provide plaintiff with a more munificent remedy, in accordance with our holding in *McLean*." [*Stevens I*, 221 N.C. App. 672, 729 S.E.2d 128, slip op. at 6-7.]

On remand, the Commission entered an order dated 2 November 2012 by Commissioner Linda Cheatham, which was joined by Chair Pamela T. Young and Commissioner Staci T. Meyer, concluding that Plaintiff was permanently and totally disabled, that Plaintiff had reached the point of maximum medical improvement, that Plaintiff had a 30% permanent partial impairment rating to his back and a 60% permanent partial impairment [rating] to his left foot, that the most munificent compensation award available to Plaintiff consisted of permanent total disability compensation in the amount of $356.56 per week pursuant to N.C. Gen. Stat. § 97-29, that Plaintiff needed ongoing medical treatment for his work-related injuries, that Plaintiff was entitled to be reimbursed for certain mileage and hotel expenses, and that Plaintiff was not entitled to an award of attorney's fees pursuant to N.C. Gen. Stat. § 97-88.1. In reaching the conclusion that Plaintiff had reached the point of maximum medical improvement and was disabled, the Commission noted that:

> 26. Based upon all of the competent, credible evidence of record, the Full Commission finds that Plaintiff has reached maximum medical improvement for all of his compensable injuries, with the exception of his groin injury. However, Plaintiff's groin injury is not a determinative factor

> in his incapacity to work. As established by the testimony of the physicians and the vocational specialist, due to his back injury and ongoing pain and the psychological impact of the same, and considering his age, education and work experience, Plaintiff has sustained a permanent and complete loss of wage earning capacity such that he will not be able to earn the same wages he earned prior to his injury by accident.

The Commission further noted in its conclusions of law that:

> 4. As a result of his March 18, 1996 compensable injury by accident, Plaintiff retains a thirty percent permanent partial impairment rating to his back and a sixty percent permanent partial impairment rating to his left foot. N.C. Gen. Stat. § 97-31.
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> 5. Plaintiff is unable to earn the same wages he was receiving at the time of his injury by accident in any employment due to the combination of all his compensable injuries, including his back injury, left foot injury and ongoing pain and the psychological impact of the same. As such, Plaintiff is permanently and totally disabled pursuant to N.C. Gen. Stat. § 97-29.
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> 6. Although pursuant to N.C. Gen. Stat. § 97-31 Plaintiff is entitled to compensation for his thirty percent permanent partial impairment rating to his back and his sixty percent permanent partial impairment rating to his left foot, his most munificent remedy is benefits under N.C. Gen. Stat. § 97-29. Plaintiff is entitled to compensation for permanent total disability in the amount of $356.56 per week for the rest of his life, absent a change in his condition. N.C. Gen. Stat. § 97-29. While Plaintiff contends that he is entitled to both ongoing

> permanent and total disability benefits and payment for the permanent partial impairment ratings to his back and foot, absent the award of a credit to defendants for payment of the permanent partial impairment ratings, this would result in an impermissible stacking of benefits covering the same injury for the same time period. *Gupton v. Builders Transport*, 320 N.C. 38, 357 S.E.2d 674 (1987).
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> Plaintiff noted an appeal to this Court from the Commission's order on remand.

*Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 2-13 (footnote and brackets omitted).

On the second appeal, this Court concluded that the Full Commission failed to "comply with both our earlier decision in this case and with the decisions in *Hill* and *McLean*" by failing to "explicitly address the extent to which Plaintiff was totally and permanently disabled solely because of his psychiatric or psychological problems[.]" *Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 20, 22. This Court thus held that the Full Commission "erred by failing to make sufficient findings to permit a proper determination of the extent to which Plaintiff is entitled to recover both total and permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 and scheduled benefits pursuant to N.C. Gen. Stat. § 97-31." *Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 26. Accordingly, this Court reversed the Full Commission's opinion and award and remanded the case with the following instructions:

> In its order on remand, the Commission must first determine whether Plaintiff is totally and permanently

> disabled by reason of his psychiatric or psychological condition, considered separate and apart from the other components of his work-related injury. In the event that the Commission answers this question in the affirmative, it must, given the unchallenged determinations made in the order under review in this case, award Plaintiff both weekly disability payments pursuant to N.C. Gen. Stat. § 97-29 and payments relating to the permanent partial impairment of his back and foot pursuant to N.C. Gen. Stat. § 97-31. On the other hand, in the event that the Commission determines that Plaintiff is not totally and permanently disabled solely because of his psychiatric or psychological condition, the Commission should award Plaintiff total permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 as it did in the order under consideration in this opinion given that Plaintiff has not challenged the Commission's determination that such benefits represent the most munificent remedy available to Plaintiff in the event that he is not entitled to receive compensation pursuant to both N.C. Gen. Stat. §§ 97-29 and 97-31.

*Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 22-23.[2] Defendants petitioned for discretionary review of this Court's second opinion, which our Supreme Court denied. *Stevens v. United States Cold Storage, Inc.*, 367 N.C. 329, 755 S.E.2d

[2] This Court also noted that "[a]lthough N.C. Gen. Stat. § 97-29(f) does provide that, 'where an employee can show entitlement to compensation pursuant to N.C. Gen. Stat. § 97-29 or N.C. Gen. Stat. § 97-30 and a specific physical impairment pursuant to N.C. Gen. Stat. § 97-31, the employee shall not collect benefits concurrently pursuant to both N.C. Gen. Stat. § 97-29 or N.C. Gen. Stat. § 97-30 and N.C. Gen. Stat. § 97-31, but rather is entitled to select the statutory compensation which provides the more favorable remedy,' this language has no application to the proper resolution of this case given that N.C. Gen. Stat. § 97-29(f) only applies to 'claims arising on or after the effective date of this 2011 act.' " *Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 25-26 n.2 (brackets omitted) (quoting N.C. Gen. Stat. § 97-29(f) (2011) and 2011 N.C. Sess. Laws 1087, 1101, ch. 287, § 23 and citing 2011 N.C. Sess. Laws 1087, 1094-96, ch. 287, § 10). We recognize that the same is true for N.C. Gen. Stat. § 97-29(e), which provides: "An employee shall not be entitled to benefits under this section or G.S. 97-30 and G.S. 97-31 at the same time." *See* 2011 N.C. Sess. Laws 1087, 1095, 1101, ch. 287, §§ 10, 23.

609 (2014).

In their brief to the Full Commission on remand, defendants moved to reopen the evidence on the issue of whether plaintiff is totally and permanently disabled due solely to his compensable psychological condition. On 30 December 2014, the Full Commission entered an opinion and award after "review[ing] the entire record including the briefs submitted by the parties upon remand from the Court of Appeals and the prior evidentiary record[,]" effectively denying defendants' motion. In Finding of Fact 27, the Full Commission found that "Plaintiff has sustained a permanent and complete loss of wage earning capacity due solely to his compensable psychological condition such that he will not be able to earn the same wages he earned prior to his injury by accident." The Full Commission thus awarded plaintiff $356.56 per week in permanent total disability compensation for the remainder of his lifetime pursuant to N.C. Gen. Stat. § 97-29 and $62,897.18 in permanent partial disability benefits "for the thirty percent permanent partial impairment rating to his back and the sixty percent permanent partial impairment rating to his left foot" pursuant to N.C. Gen. Stat. § 97-31. Defendants gave timely notice of appeal.

## II. Motion to Reopen the Evidence

Defendants argue that the Full Commission erred in denying their motion to reopen the evidence.

### A. Standard of Review

> The Commission's power to receive additional evidence is a plenary power to be exercised in the sound discretion of the Commission. Whether good ground be shown therefore in any particular case is a matter within the sound discretion of the Commission, and the Commission's determination in that regard will not be reviewed on appeal absent a showing of manifest abuse of discretion.

*Moore v. Davis Auto Service*, 118 N.C. App. 624, 629, 456 S.E.2d 847, 851 (1995) (citations, quotation marks, and brackets omitted); *see also* N.C. Gen. Stat. § 97-85 (2013). "Abuse of discretion results where the ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Wade v. Carolina Brush Mfg. Co.*, 187 N.C. App. 245, 251, 652 S.E.2d 713, 717 (2007) (citation and ellipsis omitted).

B. Analysis

Defendants contend that the Full Commission erred in denying their motion to reopen the evidence because "the issue of whether plaintiff's permanent and total disability is solely attributable to his psychological condition was not raised as an issue until after the time for taking evidence in this case was over." But plaintiff has raised this exact issue since 11 January 2010 when Dr. Barkenbus gave the following deposition testimony:

> [Plaintiff's counsel]: I'd like to now ask you an opinion question that I would like to ask you to base on your medical training—and which I'd like you to have your answer be based on your medical training and your history of treating [plaintiff], your knowledge of his conditions, and the test results and the records you have from your

> practice, and the testimony you've given today. And [I] ask you whether you have an opinion whether it's more likely than not that [plaintiff], during the time you've treated him up through the present, would, more likely than not, be disabled from working based on his psychiatric conditions alone, separate and apart from his physical conditions?
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> [Dr. Barkenbus]: I believe that the psychiatric issues, in and of themselves, would be enough to prevent work.

Defendants' counsel were present for this deposition and cross-examined Dr. Barkenbus:

> [Defendants' counsel]: Okay. So it's your opinion that [plaintiff is] unable to work?
>
> [Dr. Barkenbus]: In any competitive field, yes.
>
> [Defendants' counsel]: Okay. Is it your opinion that that is not likely to change?
>
> [Dr. Barkenbus]: Yes.

On or about 31 March 2010, plaintiff argued before Deputy Commissioner Ledford:

> Normally, a plaintiff would have to choose between scheduled benefits and ongoing total disability benefits pursuant [to] N.C.G.S. § 97-29. However, our Supreme Court has established that an injured worker can receive both types of benefits when total disability [is] brought on by a compensable psychiatric disorder. *Hill v. Hanes Corporation*, 319 N.C. 167, 353 S.E.2d 392 (1987). . . .
>
> . . . .
>
> In the present case, according to plaintiff's psychiatrist, Dr. Barkenbus, his "psychiatric issues, in and of themselves, would be enough to prevent work." (Barkenbus deposition, p. 21). Therefore, once plaintiff

> reaches maximum medical improvement for his conditions and has exercised his right to second opinions on his ratings, he will be in a position to elect to accept compensation for his ratings while continuing to receive his total disability benefits for his psychological disability.

On or about 6 January 2011, before the Full Commission, plaintiff devoted an entire subsection of his brief to this argument and concluded: "Because plaintiff suffers from a psychiatric condition that disables him in and of itself, he should be entitled to both ongoing total disability benefits and payment for his ratings once he reaches [maximum medical improvement] for all of his compensable conditions and has an opportunity to obtain second opinions on his ratings as needed." Accordingly, we hold that defendants had notice that plaintiff was arguing that his permanent and total disability was solely attributable to his psychological condition when they still could have offered opposing evidence.

Relying on *Payne v. Charlotte Heating & Air Conditioning*, defendants argue that plaintiff failed to give notice of this issue because he failed to list it in his Form 44 Application for Review to the Full Commission. *See Payne v. Charlotte Heating & Air Conditioning*, 172 N.C. App. 496, 500-01, 616 S.E.2d 356, 360 (2005). There, the defendants argued on appeal that they lacked notice of the plaintiff's claim for death benefits. *Id.*, 616 S.E.2d at 360. This Court held that "once [the] plaintiff included the issue of death benefits in her Form 44, [the] defendants were on notice that the Full Commission would be required to address that issue." *Id.* at 501, 616 S.E.2d at

360. But this Court never suggested that listing an issue on a Form 44 was the *only* way to give notice of an issue. *See id.* at 500-02, 616 S.E.2d at 360-61. In addition, we note that plaintiff specifically listed in his addendum to Form 44 the broader issue of "his right to select the most munificent remedy."

Citing to *Crump v. Independence Nissan*, defendants argue that on remand "there are occasions [when] the taking of further evidence will be necessary":

> Following an appeal to this Court if the case is remanded to the Commission, the full Commission must strictly follow this Court's mandate without variation or departure. Ordinarily upon remand the full Commission can comply with this Court's mandate without the need of an additional hearing, *but upon the rare occasion that this Court requires an additional hearing upon remand the full Commission must conduct the hearing without further remand to a deputy commissioner.*

*Crump v. Independence Nissan*, 112 N.C. App. 587, 590, 436 S.E.2d 589, 592 (1993) (emphasis added and citation omitted). But *Crump* is inapposite because here, this Court did not direct the Full Commission to conduct a new hearing; instead, it instructed the Full Commission to "determine whether Plaintiff is totally and permanently disabled by reason of his psychiatric or psychological condition, considered separate and apart from the other components of his work-related injury." *See Stevens II*, 230 N.C. App. 412, 753 S.E.2d 398, slip op. at 22-23. The Full Commission answered this question in the affirmative after "review[ing] the entire record including the briefs submitted by the parties upon remand from the Court of

Appeals and the prior evidentiary record." Accordingly, we hold that the Full Commission did not abuse its discretion in denying defendants' motion to reopen the evidence.

## III. Finding of Fact

### A. Standard of Review

Defendant next argues that "the greater weight of the evidence establishes that plaintiff's permanent and total disability is not due solely to his psychological condition" and therefore the Full Commission erred in awarding plaintiff both total and permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 and scheduled benefits pursuant to N.C. Gen. Stat. § 97-31. (Original in bold and all caps.) But we apply the following standard of review:

> We review an order of the Full Commission only to determine whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law. Because the Industrial Commission is the sole judge of the credibility of the witnesses and the weight of the evidence, we have repeatedly held that 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. In addition, where findings of fact are not challenged and do not concern jurisdiction, they are binding on appeal. The Commission's conclusions of law are reviewed *de novo*.

*Medlin v. Weaver Cooke Constr., LLC*, 367 N.C. 414, 423, 760 S.E.2d 732, 738 (2014) (citations, quotation marks, and brackets omitted).

B. Analysis

In Finding of Fact 27, the Full Commission found that "Plaintiff has sustained a permanent and complete loss of wage earning capacity due solely to his compensable psychological condition such that he will not be able to earn the same wages he earned prior to his injury by accident." As quoted above, Dr. Barkenbus testified in his deposition that plaintiff's "psychiatric issues, in and of themselves, would be enough to prevent work." We therefore hold that "competent evidence" supports the Full Commission's Finding of Fact 27. *See id.*, 760 S.E.2d at 738 (citation omitted).[3] Accordingly, we hold that the Full Commission properly addressed the question remanded by this Court in its second opinion and did not err in awarding plaintiff both total and permanent disability benefits pursuant to N.C. Gen. Stat. § 97-29 and scheduled benefits pursuant to N.C. Gen. Stat. § 97-31.[4]

IV. Conclusion

For the foregoing reasons, we affirm the Full Commission's 30 December 2014 opinion and award.

AFFIRMED.

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[3] We need not address defendants' arguments on this issue as they amount only to an invitation to reweigh the evidence. *See id.*, 760 S.E.2d at 738 ("Because the Industrial Commission is the sole judge of the credibility of the witnesses and the weight of the evidence, we have repeatedly held that 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.") (citations, quotation marks, and brackets omitted).

[4] Defendants listed six interrelated issues at the beginning of their principal brief but only argued the two issues that we have discussed above. We hold that defendants have abandoned any issue to the extent that it goes beyond the argued issues. *See* N.C.R. App. P. 28(b)(6).

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).