IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-447

Filed: 15 November 2016

North Carolina Industrial Commission, I.C. No. 13-745623

STEVIE PARKER, Employee, Plaintiff,

v.

WEST PHARMACEUTICAL SERVICES, Employer, and THE PHOENIX INSURANCE CO. (c/o TRAVELERS INSURANCE), Carrier, Defendants.

Appeal by Plaintiff from Opinion and Award entered 21 December 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 5 October 2016.

Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for Plaintiff-Appellant.

Robinson & Lawing, L.L.P., by Jane C. Jackson, for Defendant-Appellees.

HUNTER, JR., Robert N., Judge.

Stevie Parker ("Plaintiff") slipped and fell at his place of employment on 12 August 2013. Plaintiff alleges the fall aggravated his pre-existing, non-disabling spinal conditions, resulting in total disability. After the deputy commissioner found in Plaintiff's favor, the full Industrial Commission ("the Commission") issued an interlocutory order for a new medical examination. After receiving the results, the Commission denied Plaintiff compensation for his cervical spine injury, concluding

the fall neither caused nor aggravated Plaintiff's pre-existing cervical condition. We affirm the Commission's Opinion and Award.

I. Facts and Procedural Background

On 22 August 2013, Plaintiff filed a Form 18 (Notice of Accident to Employer and Claim of Employee, Representative, or Dependent), stating he was injured as a result of a fall at his place of employment on 15 August 2013. Plaintiff filed an amended Form 18 on 16 September 2013, changing the date of the injury to 12 August 2013 ("the August incident"). West Pharmaceutical ("Defendant") filed a Form 61 (Denial of Worker's Compensation Claim) on 4 September 2013 denying Plaintiff was injured by accident and asserting no medical evidence of an injury by accident had been presented. On 16 September 2013, Plaintiff filed Form 33 (Request that Claim be Assigned for Hearing), citing Defendant's denial of benefits as the reason for the hearing.

On 26 March 2014, a deputy commissioner heard the case. The parties stipulated as to the employee-employer relationship and Plaintiff's average weekly wage and compensation rate. The deputy commissioner issued an Opinion and Award dated 6 October 2014, concluding Plaintiff suffered compensable injuries to his neck and lower back, the injury to his neck aggravated Plaintiff's preexisting cervical condition, Plaintiff was entitled to Temporary Total Disability ("TTD") as of the last day he worked, and Plaintiff was entitled to have Defendant pay for past and future

treatment connected to both injuries. Defendant gave proper Notice of Appeal to the Commission on 14 October 2014.

After reviewing the prior Opinion and Award and the briefs of the parties, the Commission issued an interlocutory order on 7 July 2015, ordering the record reopened to allow Plaintiff to return to Dr. Jessica Woodcock ("Dr. Woodcock") for a medical examination and evaluation of his lower back condition. The Commission directed Dr. Woodcock to render her medical opinion as to whether Plaintiff's lower back condition and subsequent treatment were causally related to the August incident. Plaintiff reported to Dr. Woodcock for examination on 27 October 2015 and Dr. Woodcock submitted her report to the Commission on 30 October 2015

The Full Commission issued its Opinion and Award on 21 December 2015, overturning the deputy commissioner's decision. The Commission found the following facts.

Plaintiff, a forty-five year old male at the time of the first hearing, had been employed by Defendant since 2008 as a maintenance technician at its plant in Kinston, North Carolina. Defendant manufactures stoppers, plungers, and seals for the health care industry. Plaintiff's duties included "installing, modifying and maintaining tools, vehicles, and equipment" at the plant. The Commission found Plaintiff's job was physical, "requiring plaintiff to walk frequently around the plant,

and sometimes requiring him to lift more than fifty pounds" during the three twelve hour shifts Plaintiff worked per week.

In February 2010, Plaintiff slipped and fell on ice, resulting in a "hot burning sensation in the back of his shoulder and lower neck." Plaintiff was subsequently diagnosed with underlying degenerative disc disease in his fifth and sixth cervical vertebrae and a right sided neck sprain. Plaintiff was released to return to full work duty immediately after being examined. While Plaintiff sought chiropractic treatment between February and May 2010 for the burning and tingling sensation in his arm and shoulder, he continued to otherwise work at full duty at his job with Defendant and referee basketball games in his free time.

On 6 March 2013, Plaintiff slipped and fell while at work, landing on his back and buttocks. He was treated by Dr. Kris Cummings at Kinston Medical Specialists two days later, who assessed back pain but no apparent significant injury. Plaintiff was released to return to work with no limitations.

Plaintiff subsequently returned to the chiropractor on 29 May 2013, complaining of pain and tingling in both of his hands and fingers. He reported this had been ongoing for roughly three weeks with a "gradual unknown onset." The chiropractor diagnosed Plaintiff with cervical dysfunction and cerviobrachial syndrome at the level of his fifth cervical vertebra. Plaintiff continued to work full time and referee basketball games at this time.

At about 9:00 p.m. on 12 August 2013, Plaintiff received a call to fix a broken reflector in the plant's compounding area, which required him to squat down during the repair. Plaintiff testified as he was getting up, his right foot slipped out from under him, causing him to fall backward two and a half to three feet. With his head in a "scrunched" position, he stated he hit his back between his shoulder blades on an iron beam and hit his right leg on a drip pan. After falling, Plaintiff said he remained down for a few minutes, then got up and returned to the maintenance shop. Plaintiff then worked until his shift ended at 7:00 a.m. At the end of shift, Plaintiff filled out an incident report regarding the slip and fall, noting he began to hurt right after the incident, he was now "getting stiff," he had tingling in his right hip and lower back and both his arms were sore "from me trying to brace myself."

On 15 August 2013, Defendant sent Plaintiff to be examined by Dr. Woodcock, an orthopedic surgeon. Plaintiff recounted the events surrounding his fall, and complained "over the last couple days" since the fall, he had experienced "stiffness all over" and pain radiating down his right leg. He also complained of tingling in the third and fourth digits of one of his hands,[1] which he claimed to have experienced since a different episode at work in February 2013. Dr. Woodcock's physical exam revealed Plaintiff had pain-free range of motion in his neck. She diagnosed him with a mild low back muscle strain, diffuse soft tissue tenderness, and radicular-type

[1] Neither the Opinion and Award nor the record establish which hand in which Plaintiff reported tingling.

symptoms in his fingers. Dr. Woodcock released Plaintiff to work without restriction, and directed him to return in two weeks for follow-up.

Plaintiff subsequently gave a recorded statement to the Phoenix Insurance Company's adjustor on 22 August 2013 in which he stated his fingers were going numb. Plaintiff stated the tingling in his right third and fourth fingers had begun after a fall in April, but since the August incident, they now felt like there was "a rubber band around them, like they're frozen[.]" He also stated he was experiencing pain in his right arm and shoulder, and tingling in his right index finger since the August incident.

On 23 August 2013, Plaintiff returned to Dr. Woodcock before his scheduled appointment, seeking to address symptoms of neck pain and right hand tingling. Plaintiff stated the tingling in his middle finger had changed to coldness. He also complained of lower back pain and shooting pain in an unspecified location. Dr. Woodcock noted slow, but pain free range of motion in Plaintiff's neck. She took cervical x-rays, which revealed "slight degenerative changes" in the discs between his fifth, sixth, and seventh cervical vertebrae. After reviewing the x-rays, Dr. Woodcock reported Plaintiff had degenerative changes in his cervical spine, as well as radicular symptoms which predated the August incident. She released Plaintiff to work "as tolerated," recommended electromyogram ("EMG") testing for Plaintiff's right hand and physical therapy for his neck and low back pain.

Plaintiff returned to Dr. Woodcock on 5 September 2013 complaining of pain in his left calf, right foot, and entire back, radiating into his elbows. On examination, Plaintiff had pain free cervical spine motion, pain free lateral bending, and was able to flex his spine to 90 degrees without difficulty. Dr. Woodcock again ordered x-rays of Plaintiff's cervical and thoracic spine, which showed Plaintiff had mild degenerative changes throughout his thoracic spine and more severe degenerative changes in his cervical and lumbar spine. Dr. Woodcock then assigned Plaintiff a forty pound lifting restriction.

Plaintiff continued to work full time until 27 August 2013, but testified he had difficulty doing his assigned job tasks due to headaches, stiffness, pain, and tingling in his fingers and hands. He stated after the August incident he had difficulty moving around quickly, lifting objects, or putting pressure on his arms. He left his shift early on 27 August and has not worked anywhere else since. Defendant told Plaintiff they could accommodate the forty-pound lifting restriction imposed by Dr. Woodcock, but Plaintiff did not return to work, and has not since sought work elsewhere. Plaintiff also testified he stopped refereeing basketball games after the August incident.

Plaintiff followed up with Dr. Woodcock for results of the EMG testing on 18 September 2013. Dr. Woodcock noted the test results were "essentially negative," but the numbness in Plaintiff's fingers persisted. She recommended a cervical MRI to investigate cervical radicular symptoms. Plaintiff requested a referral to Dr. Kurt

Voos ("Dr. Voos"), an orthopedic spinal surgeon, for further evaluation. Dr. Woodcock agreed the referral was appropriate, and made no further treatment recommendations.

Plaintiff underwent the cervical MRI on 26 September 2013, which revealed severe multilevel cervical spondylosis, with mass effect on the exiting nerve root at the fifth cervical vertebra and moderate to severe foraminal narrowing at the fifth and sixth cervical vertebrae.

On 25 September 2013, Plaintiff went to Lenoir Family Medicine, complaining of shooting pains in his back, headaches, difficulty turning his neck, and numbness in his fingers and foot. Plaintiff was examined by Physician's Assistant Carlton Crain ("Mr. Crain"), who noted he was able to bend and touch his toes despite tenderness and muscle tightness in his upper lumbar and lower thoracic spine. X-rays showed chronic disc disease at the fifth and sixth cervical vertebrae and mild anterior spondylosis at the sixth and seventh cervical vertebrae. Mr. Crain noted the injury seemed similar to a whip-lash injury and recommended physical therapy for Plaintiff's neck condition.

Plaintiff saw Dr. Voos' Physician's Assistant, William S. Payne ("Mr. Payne") on 4 October 2013. In the initial consult, Plaintiff complained of "burning, aching, [and] stabbing" pain in his neck, low back pain, and numbness and tingling in his fingers, and stated his increasing neck pain had kept him from working. Mr. Payne's

physical examination revealed pain with rotation and extension in Plaintiff's cervical spine, which Mr. Payne diagnosed as multilevel cervical degenerative disc disease with disc osteophyte complex and stenosis. Mr. Payne also diagnosed Plaintiff with low back pain. He recommended Plaintiff undergo cervical epidural steroid injections ("ESIs") and limited Plaintiff to sedentary work. Mr. Payne gave Plaintiff a Medical Absence Report which detailed his diagnosis and physical restrictions, and directed Plaintiff should remain out of work if Defendant could not accommodate his restrictions. Informed of the sedentary work limitation, Defendant told Plaintiff they had no work for him, but he could return if he could get up to a forty pound lifting capacity.

Plaintiff began receiving ESIs in his cervical spine at Vidant Medical Center for Pain Management on 28 October 2013. Plaintiff received further injections on 11 November 2013 and 25 November 2013. He reported roughly a week of relief with each ESI, and at a 18 December 2013 follow up visit at Lenoir Family Medicine reported he was doing "ok," with no complaints of mid or lower back pain.

Plaintiff testified after completing his last ESI, Dr. Voos' practice recommended a cervical CT myelogram. Plaintiff underwent the procedure on 20 December 2013, which showed findings that correlated possibly with disc herniation and radiculopathy on his right side. After a round of physical therapy failed to produce long term relief for Plaintiff's neck, Dr. Voos recommended a cervical fusion.

On 22 January 2014, Plaintiff returned to Dr. Voos, complaining of persistent pain in his right buttock and leg. Dr. Voos ordered a lumbar and thoracic MRI, which revealed spondylosis, central disc extrusion and bulging. Dr. Voos reported these findings correlated with Plaintiff's symptoms, but did not recommend treatment.

Plaintiff underwent the recommended cervical fusion on 9 May 2014. When deposed on 6 August 2014, Dr. Voos could not state an opinion on how successful the surgery had been, but noted Plaintiff had not reached maximum medical improvement and was still being actively treated.

At her deposition, Dr. Woodcock testified as to Plaintiff's cervical condition in her medical opinion, it was unlikely the August incident caused an injury or any aggravation of his pre-existing condition. She stated she never diagnosed Plaintiff with an acute injury to his neck, Plaintiff's radicular symptoms predated the August incident, and Plaintiff's description of his symptoms was consistent with the degenerative changes showed by diagnostic testing. She also testified although Plaintiff did complain of a change in his radicular symptoms on 23 August 2013, she would have expected more severe symptoms, "right away" after the incident had there been a causative link between them.

As to Plaintiff's lower back, Dr. Woodcock testified Plaintiff suffered a low back strain causally related to the August incident, but she was unable to say if he needed further treatment after she last saw him on 18 September 2013. In the medical report

submitted to the Commission after the interlocutory order, Dr. Woodcock noted Plaintiff's symptoms as presented in September 2013 were "not impressive," and consistent with a muscle strain that "certainly would be better [two] years later." She reported his MRI results indicated degenerative changes in his lumbar and thoracic spine which were not likely the result of an acute trauma.

At his deposition, Dr. Voos was initially unwilling to extend a medical opinion as to whether the August incident caused or aggravated Plaintiff's cervical condition, seeking to "defer unless I have knowledge of . . . any prior treatment records or somebody can tell me whether or not he's had any treatment on his neck prior." Dr. Voos was then presented with the following hypothetical, which the Full Commission found consistent with the evidence:

> Let's assume that two and a half months prior to [the August incident], he [Plaintiff] had some tingling and numbness in the three digits that you were talking about, the three digits on the right hand, that he had no medical treatment for two and a half months, that he had continued normal work activities and normal life activities, and that after [the August incident], there was an increase in pain and an increase [in] numbness and a change in the numbness in his right hand. Assume that the increased pain and tingling persisted until the time you began seeing him in October and assume that the treatment objective testing was similar to what you have provided since that time. Based on that hypothetical, would you have an opinion to a reasonable degree of medical certainty whether [the August incident] caused the injury to his neck?

Based on that hypothetical, Dr. Voos stated "it seems like an aggravation of an underlying problem," and "[h]is increased symptoms and increased pain versus the numbness, tingling, I think those are aggravated by it."

However, on cross examination, Dr. Voos admitted he did not know of Plaintiff's prior history of neck issues, and was not aware of and did not consider Dr. Woodcock's medical records in making his opinion. Dr. Voos also admitted he was under the wrongful impression Plaintiff had an immediate onset of pain and stinging in his neck and back, and was unable to complete his work shift after the August incident. When asked whether these additional factors would change his opinion, Dr. Voos testified he believed it was "relevant information and would need to be reviewed to make an opinion." When asked to confirm his opinion by Plaintiff on redirect examination, Dr. Voos would say only "I'll leave your hypothetical the way I stated it and my opinion on that hypothetical and then I'll add on that if there's other relevant medical information prior then that could certainly come into play in making a decision on causation."

As to Plaintiff's lower back, Dr. Voos testified he could not offer a medical opinion as to whether Plaintiff's lower back condition was causally related to the August incident because his treatment had focused only on Plaintiff's neck.

Based on these medical records and testimony, the Commission found "based upon a preponderance of the evidence," Plaintiff had sustained an injury to his back

when he slipped and fell on 12 August 2013. The Commission further found under the same standard only Dr. Woodcock had given competent opinion testimony as to whether the incident caused or aggravated Plaintiff's pre-existing cervical condition. After considering Dr. Voos' deposition, the Commission found "Dr. Voos did not give a causation opinion taking into consideration the facts he was asked to assume by both Plaintiff's Counsel and Defense Counsel." As a result, the Commission found the August incident neither caused or aggravated Plaintiff's pre-existing cervical condition.

Turning to Plaintiff's lower back, the Commission found "based upon a preponderance of the evidence" Plaintiff suffered a low back strain for which he received compensable treatment through his 25 September 2013 visit to Lenoir Family Medicine. However, they also found Plaintiff had not shown the treatment he received after that date was causally related to the August incident. Similarly, because Plaintiff was not medically removed from work because of the low back strain, and because Defendant told him they were willing to accommodate his resulting lifting restriction, the Commission found "Plaintiff has not proven that he suffered any disability as a result of his August 12, 2013 injury to his lower back."

As a result, the Commission concluded based on a preponderance of the evidence, the August incident did not cause or aggravate Plaintiff's cervical condition, but it did cause a low back strain that required treatment through 25 September

2013. The Commission further concluded Plaintiff had not satisfied his burden of proving he was disabled by his low back strain. Plaintiff's claim for his cervical condition was denied, his claim for the lower back condition was granted, and Plaintiff was awarded payment for the treatment he received for his lower back between 12 August and 25 September 2013.

Plaintiff filed a notice of appeal of the Commission's Opinion and Award to this Court on 3 March 2016. Plaintiff amended his notice of appeal on 14 March 2016 to include the interlocutory order

II. Jurisdiction

This Court has jurisdiction over appeals from the Industrial Commission pursuant to N.C. Gen. Stat. § 7A-29(a) and N.C. Gen. Stat. § 97-86 (2015).

III. Standard of Review

We review an appeal from the Commission to determine whether the findings of fact are supported by competent evidence, and whether the findings of fact support the conclusions of law. *Hassell v. Onslow County Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008). The Industrial Commission "is the sole judge of the credibility of the witnesses and the weight of the evidence." *Id.* 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 binding on appeal. *Allred v. Exceptional Landscapes, Inc.*, 227 N.C. App. 229, 232, 743 S.E.2d 48, 51 (2013). "The Commission's conclusions of law are reviewable *de novo*." *Id*.

IV. Analysis

A. Interlocutory Order

Plaintiff argues the Commission's interlocutory order was defective in that it both failed to address the issue in dispute and violated his right to due process by preventing him from cross examining Drs. Woodcock and Voos. However, Defendant correctly argues we may not consider this argument because Plaintiff failed to preserve the issue for review by filing a timely objection with the Commission.

Under the North Carolina Rules of Appellate Procedure, "a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context" in order to preserve the issue for appellate review N.C.R. App. P. 10(a)(1) (2016). "[A] party's failure to properly preserve an issue for appellate review ordinarily justifies the appellate court's refusal to consider the issue on appeal." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 195-96, 657 S.E.2d 361, 364 (2008) (citing *State v. Campbell*, 359 N.C. 644, 669, 617 S.E.2d 1, 17 (2005), *cert. denied*, 547 U.S. 1073 (2006)). This Court has previously

applied this rule to the proceedings of the Industrial Commission. *Boylan v. Verizon Wireless*, 224 N.C. App. 436, 442, 736 S.E.2d 773, 777 (2012) (holding that although the defendant had made an evidentiary objection at a deposition, she failed to preserve it for review because she did not request a ruling on the objection by the Commission).

Here, the record shows Plaintiff never objected to the interlocutory order, never moved to re-depose Dr. Woodcock or Dr. Voos, and never attempted to submit any other kind of documentary evidence in rebuttal of Dr. Woodcock's report. As a result, we hold Plaintiff has waived appeal of the interlocutory order.

B. Findings of Fact

Plaintiff challenges the Commission's finding the August incident did not cause or aggravate his pre-existing cervical condition. After careful review, we hold the finding was supported by competent evidence.

"When a pre-existing, non-disabling, non-job-related condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment . . . so that disability results, then the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent." *Hoyle v. Carolina Associated Mills*, 122 N.C. App. 462, 466, 470 S.E.2d 357, 359 (1996). However, it is the plaintiff's duty to show causation between the injury and the resultant medical condition. *Porter v. Fieldcrest Cannon,*

Inc., 133 N.C. App. 23, 28, 514 S.E.2d 517, 521 (1999) ("It is axiomatic that plaintiff has the burden of initially establishing a causal relationship between a work-related incident and her medical conditions."). In meeting this burden, the plaintiff need not show the work-related injury is the sole cause of the medical condition. Instead, "[i]f the work-related accident contributed in some reasonable degree to plaintiff's disability, she is entitled to compensation." *Smith v. Champion Int'l*, 134 N.C. App. 180, 182, 517 S.E.2d 164, 166 (1999) (quoting *Hoyle*, 122 N.C. App. at 466, 470 S.E.2d at 359).

Here, Plaintiff contends Dr. Woodcock, and consequently, the Commission, proceeded under the "mistaken impression that she had to choose between [Plaintiff's] pre-existing cervical condition and his fall at work as the primary cause of his post-accident cervical problems." However, Plaintiff points only to a few selected excerpts from Dr. Woodcock's testimony to support his interpretation. As we have previously held, "it is [not] the role of this Court to comb through testimony" and reweigh the evidence. *Alexander v. Wal-Mart Stores, Inc.*, 166 N.C. App. 563, 573, 603 S.E.2d 552, 558 (Hudson, J., dissenting), *adopted per curiam*, 359 N.C. 403, 610 S.E.2d 374 (2005). Dr. Woodcock repeatedly expressed it was her medical, not legal opinion Plaintiff's cervical condition was not linked to the August incident. As a result, we conclude there is competent evidence to support the Commission's finding.

Plaintiff also challenges the Commission's finding Dr. Voos did not give opinion testimony as to whether Plaintiff's cervical condition was caused by the August incident. Again, we hold the finding was supported by competent evidence.

"[W]here the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Young v. Hickory Bus. Furniture*, 353 N.C. 227, 230, 538 S.E.2d 912, 915 (2000). In rendering that opinion, "[a]n expert witness may base his opinion upon facts within his own knowledge or upon the hypothesis of the finding of certain facts recited in the question." *Dean v. Carolina Coach Co.*, 287 N.C. 515, 522, 215 S.E.2d 89, 94 (1975).

Hypothetical questions generally need to include "all of the material facts which will be necessary to enable the witness to form a satisfactory opinion." *Dean*, 287 N.C. at 518, 215 S.E.2d at 91 (quoting 1 D. Stansbury, North Carolina Evidence § 137 at 452 (Brandis Rev.)). A question "which omits any reference to a fact which goes to the essence of the case and therefore presents a state of facts so incomplete that an opinion based on it would be obviously unreliable is improper, and the expert witness's answer will be excluded." *Dean*, 287 N.C. at 518, 215 S.E.2d at 91. Additionally, an opinion that "rests upon mere speculation or possibility" is incompetent evidence. *Young*, 353 N.C. at 230, 538 S.E.2d at 915. However, not all

factual omissions are fatal to a hypothetical. A hypothetical and its answer remain valid if the question presents "sufficient facts to allow [the witness] to express an intelligent and safe opinion." *Robinson v. J.P. Stevens & Co.*, 57 N.C. App. 619, 622-23, 292 S.E.2d 144, 146 (1982) (quoting *Dean*, 287 N.C. at 521, 215 S.E.2d at 93).

In the instant case, Plaintiff contends Dr. Voos rendered a medical opinion based on a valid hypothetical question and the Defense's subsequent counter-hypotheticals neither forced Dr. Voos to retract his opinion nor pointed to essential facts omitted from the original hypothetical. Nevertheless, there is competent evidence to support the Commission's finding that Dr. Voos indeed did not give a definitive opinion.

When asked whether he could render an opinion as to the cause of Plaintiff's cervical condition, Dr. Voos initially refused to answer, stating he would defer on giving an opinion "without knowledge of . . any previous treatment records or somebody can tell me whether or not he's had any treatment on his neck prior." Plaintiff's hypothetical was thus designed to satisfy this concern, supplying Dr. Voos with a basis upon which to form an opinion. However, Plaintiff's hypothetical specifically omitted the exact kind of information Dr. Voos conditioned his opinion upon, Plaintiff's history of prior chiropractic treatment and his visits with Dr. Woodcock. In fact, Defendant's questioning revealed Dr. Voos was not only unaware of Plaintiff's treatment with Dr. Woodcock, but was operating under a false

impression as to Plaintiff's medical condition immediately after the August incident. As a result, we conclude there is competent evidence to find the hypothetical upon which Dr. Voos based his opinion was fatally deficient and subsequently, Dr. Voos did not offer a definitive medical opinion as to causation.

Finally, Plaintiff contends the Commission's findings recited evidence without making proper findings of fact as to Plaintiff's credibility, and therefore prevent this Court from determining whether there are findings on all crucial facts upon which Plaintiff's right to compensation depends. We disagree.

When making its findings of fact, this Court has held the Commission must is required to find only those facts which are "necessary to support its conclusions of law," *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 602, 532 S.E.2d 207, 213 (2000), and those which relate to "crucial facts upon which the question of plaintiff's right to compensation depends." *Gaines v. L.D. Swain & Son, Inc.*, 33 N.C. App. 575, 579, 235 S.E.2d 856, 859 (1977). In the end, the reviewing court should be able to "determine whether [the facts] are supported by the evidence and whether the law has been properly applied to them." *Id.* at 579, 235 S.E.2d at 859.

Here, while the Commission's findings do tend toward recitation, there are specific and definite findings of fact for each of the "crucial facts" leading to its conclusion Plaintiff's cervical condition was neither caused by nor aggravated by the August incident. As noted above, only an expert witness may give competent

testimony as to complicated issues of medical causation. *Young*, 353 N.C. at 230, 538 S.E.2d at 915. Plaintiff's testimony as a layman, while necessary to tell the story and inform the Commission as to the circumstances of the injury, is not relevant to the question of whether Plaintiff's cervical condition was caused or aggravated by the August incident. As a result, we find the Commission's findings of fact are legally sufficient.

C. Conclusions of Law

Plaintiff challenges the Commission's legal conclusion Plaintiff's cervical condition was neither caused by nor aggravated by the August incident, contending the Commission implicitly based its conclusion on the fact Plaintiff's neck injury was not accompanied by contemporaneous symptoms of pain. We disagree.

N.C. Gen. Stat. § 97-2(6) defines "injury" as "injury by accident arising out of and in the course of the employment." Referring specifically to back injuries, the statute requires compensable injuries must be a "direct result of a specific traumatic incident of the work assigned." N.C. Gen. Stat. § 97-2(6) (2015). In defining the "specific traumatic incident," we have previously held the onset of pain is not the incident itself, but rather the result of the incident. *Roach v. Lupoli Constr. Co.*, 88 N.C. App. 271, 273, 362 S.E.2d 823, 824 (1987). Thus, compensation may not be denied merely because the onset of pain was not simultaneous with the injury. *Id.*

Here, Plaintiff does not show the Commission's legal conclusion was based on an improper finding of fact. In *Roach*, the Commission explicitly denied recovery because they found "plaintiff experienced no pain while performing the work assigned." 88 N.C. App. at 272, 362 S.E.2d at 824. In the instant case, the Commission made no such explicit finding. Rather, the Commission relied on its findings with regard to the medical opinion testimony of Drs. Woodcock and Voos. As we have already concluded those findings are based on competent evidence, we now conclude the Commission's conclusion of law is supported by its findings of fact.

For the foregoing reasons, the Industrial Commission is

AFFIRMED.

Judges ELMORE and DILLON concur.

Report per Rule 30(e).