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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-228

Filed: 15 October 2019

North Carolina Industrial Commission, I.C. No. 13-7190

LISA A. GARRETT, Employee, Plaintiff,

v.

THE GOODYEAR TIRE & RUBBER COMPANY, Employer, LIBERTY MUTUAL INSURANCE COMPANY, Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 22 January 2019 by the North Carolina Industrial Commission. Heard in the Court of Appeals 5 September 2019.

*The Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, and Law Office of David P. Stewart, by David P. Stewart, for plaintiff-appellant.*

*Hedrick Gardner Kincheloe & Garofalo, LLP, by M. Duane Jones, Matthew J. Ledwith, and Linda Stephens, for defendant-appellees.*

ARROWOOD, Judge.

Lisa A. Garrett ("plaintiff") appeals from the Full Commission of the North Carolina Industrial Commission's ("the Commission") opinion and award. For the reasons stated herein, we affirm the decision of the Commission.

## I. Background

This case is before us for a second time. A full discussion of the circumstances precipitating plaintiff's workplace injury and subsequent worker's compensation claim is found in our first opinion in this case. *Garrett v. Goodyear Tire & Rubber Co.*, __ N.C. App. __, __, 817 S.E.2d 842, 846-48 (2018) [hereinafter *Garrett I*]. In the Commission's first adjudication of this matter, plaintiff argued that defendant-employer's conduct required that it be estopped as a matter of law from denying the compensability of her claim. *Id.* at __, 817 S.E.2d at 847-48. In its first opinion and award, the Commission "concluded that [p]laintiff's low back condition was not a compensable injury but her neck condition was. Plaintiff was awarded total temporary disability compensation for her neck injury from 13 May 2014 (the date [defendant-employer] stopped accommodating her light-duty work restrictions) to 16 July 2015 (the date [p]laintiff refused [d]efendants' offer to return to her previous position at the same wages)." *Id.* at __, 817 S.E.2d at 847-48. Plaintiff and defendants both appealed the opinion and award on several grounds, only two of which are relevant in the case now before us. *Id.* at __, 817 S.E.2d at 848.

In *Garrett I*, we concluded that, "because [p]laintiff properly raised the [estoppel] issue before the Deputy Commissioner and the Full Commission[,]" the Commission erred by failing to address plaintiff's estoppel argument. *Id.* at __, 817

S.E.2d at 848. We remanded the case to the Full Commission with the following mandate:

> [C]onsider whether the facts of this case support a conclusion that [d]efendants should be estopped from denying the compensability of [p]laintiff's claims. Should the Full Commission determine that the doctrine of estoppel applies, it should determine whether [d]efendants are liable for the workers' compensation benefits. The Full Commission should rely on the findings of fact already made and may make any additional findings it deems necessary.

*Garrett I* at __, 817 S.E.2d at 850.

On remand, the Commission addressed plaintiff's estoppel argument by supplementing its opinion with finding of fact 42:

> 42. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that plaintiff has not presented sufficient evidence that defendants falsely represented facts to plaintiff in an effort to induce plaintiff to rely upon an acceptance of this claim prejudicially with respect to her alleged back injury. As herein described above, plaintiff's injury occurred on December 15, 2013. Plaintiff filed a Form 18 *Notice of Accident to Employer and Claim of Employee* on January 2, 2015, which did not list any days that plaintiff missed work due to her work injury. On February 13, 2015, upon notice of the claim, defendants filed a Form 63, Section 2 initiating payment of medical benefits only without prejudice, memorializing the manner in which they treated the claim from its inception. On August 18, 2015, defendants filed a Form 61 *Denial of Workers' Compensation Claim*, denying liability for the December 2013 incident. The Full Commission finds that defendants voluntarily provided medical

> treatment to plaintiff. Defendants did not make false representations to plaintiff about her back claim, nor conceal material facts from her. Defendants did not act in a manner designed to prevent plaintiff from selecting her own physicians or otherwise act in her best interests with respect to medical, indemnity, and other benefits under the Act for her alleged back injury. Likewise, plaintiff did not detrimentally rely on any such misrepresentations from defendants which prejudiced her claim. Accordingly, defendants did not act in a manner that prejudiced plaintiff from pursuing or receiving all benefits available to her under the Act.

Based on this new finding of fact, the Commission entered six additional conclusions of law:

> 10. N.C. Gen. Stat. § 97-18(d) provides,
>
> > In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to

> investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of [N.C. Gen. Stat. §] 97-18.1.

N.C. Gen. Stat. § 97-18(d) (2017).

11. "The party invoking the equitable estoppel doctrine has the burden of proving facts necessary to establish the essential elements." *State Farm Auto. Ins. Co. v. Atlantic Indem. Co.*, 122 N.C. App. 67, 75-76, 468 S.E.2d 570, 575 (1996). The elements of equitable estoppel, which plaintiff must prove, include:

    (1) Conduct which amounts to a false representation or concealment of material facts, or at least, which is reasonably calculated to convey the impression that the facts are otherwise than, and inconsistent with,

> those which the party afterwards attempts to assert; (2) intention or expectation that such conduct shall be acted upon by the other party, or conduct which at least is calculated to induce a reasonably prudent person to believe such conduct was intended or expected to be relied and acted upon; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party sought to be estopped; and (3) action based thereon of such a character as to change his position prejudicially.

*Gore v. Myrtle/Mueller*, 362 N.C. 27, 33-34, 653 S.E.2d 400, 405 (2007). Plaintiff has made no effort to prove or argue any of these essential elements of estoppel.

12. "It cannot be said that when an employer does what the Act requires or permits him to do, he thereby perforce admits liability and waives the protective provisions of a statute enacted in his behalf." *Biddix v. Rex Mills, Inc.*, 237 N.C. 660, 664, 75 S.E.2d 777, 780 (1953). The Court explained that the Workers' Compensation Act permits employers to provide immediate medical treatment to employees and encourages such behavior. Oftentimes, accidents do not produce injuries, or minor injuries, and employers should be encouraged to provide treatment or voluntarily incur medical expenses. Further,

> > This humanitarian conduct on the part of the employers of the State is permitted by the statute. And aside from any statutory provision on the subject, we are committed to the view that such conduct cannot in any sense be deemed an admission of liability.

> *Biddix*, 237 N.C. at 664, 75 S.E.3d [sic] at 781. No portion of the Act requires the employer to admit or deny their liability after they voluntarily pay for medical treatment.
>
> 13. The 90-day period to accept or deny a claim pursuant to N.C. Gen. Stat. § 97-18 does not apply where an employer agrees to pay medical expenses, but where an employee has not alleged entitlement to disability payments. N.C. Gen. Stat. § 97-18 (2017).
>
> 14. In the present case, the Full Commission concludes that defendants should not be estopped from denying the compensability of plaintiff's back injury. Defendants did not act improperly or violate the provisions of N.C. Gen. Stat. § 97-18(d), necessitating that they be estopped from denying the claim as they did. Plaintiff did not file a Form 18 until January 2, 2015, which did not list any days that plaintiff had missed work due to a work injury. Neither providing medical treatment, taking a recorded statement, assigning a nurse case manager to the file, nor filing a Form 63, Section 2 constituted acceptance of the claim. Further, plaintiff has failed to present sufficient evidence that defendants falsely represented facts to her or attempted to induce her to rely upon any untrue fact prejudicially with respect to her alleged back injury. *Gore*, 362 N.C. at 33-34, 653 S.E.2d at 405 (2007).
>
> 15. Assuming *arguendo* that defendants failed to timely file any Industrial Commission forms in this matter, defendants were not prohibited from contesting the compensability of the claim, even though they may be subjected to fines by the Commission in accordance with N.C. Gen. Stat. § 97-18(j).

In *Garrett I*, this Court also remanded this case to the Commission with instructions to enter sufficient factual findings regarding plaintiff's earning capacity

in support of its conclusion that she was disabled between 13 May 2014 and 16 July 2015. *Garrett I* at __, 817 S.E.2d at 859. On remand, the Commission entered new factual findings relevant to the issue of whether plaintiff qualified as disabled. Based on its new findings of fact, the Commission reversed its prior determination and concluded as a matter of law that plaintiff was not disabled during this time period.

## II. Discussion

On appeal, plaintiff challenges the manner in which the Commission addressed her estoppel argument and the Commission's determination that she was not disabled between 13 May 2014 and 16 July 2015. For the reasons discussed below, we affirm the Commission's amended opinion and award.

### A. Addressing Plaintiff's Estoppel Argument

Plaintiff first argues that the Commission: (a) failed to follow this Court's directive "to consider whether the facts of this case support a conclusion that the [defendants] should be estopped from denying coverage[,]" *Garrett I at* __, 817 S.E.2d at 860; and (b) failed to enter sufficient findings of fact and conclusions of law on the estoppel issue. We address each argument in turn.

#### 1. Compliance with Instructions on Remand

Plaintiff argues that the Commission "completely ignored and refused to follow the mandate of this Court" by "simply fail[ing] to take [plaintiff]'s estoppel argument seriously." We disagree.

In finding of fact 42, the Commission considered several aspects of defendant-employer's conduct, and whether or not any of such conduct supported plaintiff's estoppel argument against defendant-employer. The Commission also entered conclusions of law applying these findings to the elements of an estoppel claim, and held that plaintiff's estoppel claim was not warranted by an application of the law to the facts. Therefore, it is clear that the Commission did not patently ignore our instruction to address plaintiff's estoppel argument on remand.

2. Findings and Conclusions on the Estoppel Issue

Plaintiff next argues that the Commission's conclusion of law that defendants were not estopped from denying liability for her claims was not supported by adequate findings of fact. We disagree.

> "Appellate review of an award from the Industrial Commission is generally limited to two issues: (i) whether the findings of fact are supported by competent evidence, and (ii) whether the conclusions of law are justified by the findings of fact." *Chambers v. Transit Mgmt.*, 360 N.C. 609, 611, 636 S.E.2d 553, 555 (2006) (citation omitted). Unchallenged findings of fact are presumed to be supported by competent evidence, and findings of fact supported by competent evidence are binding on appeal. *Chaisson v. Simpson*, 195 N.C. App. 463, 470, 673 S.E.2d 149, 156 (2009). The Commission's conclusions of law are reviewed

> *de novo*. *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004).

*Penegar v. United Parcel Serv.*, __ N.C. App. __, __, 815 S.E.2d 391, 394 (2018). On appeal, this Court does not weigh the evidence or decide the issue on the basis of its weight. *Id.* at __, 815 S.E.2d at 397 (citing *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998)). Our responsibility is to determine whether the record contains any evidence tending to support the finding. *Id.* at __, 815 S.E.2d at 397 (citing *Adams* at 681, 509 S.E.2d at 414. We are required to review the challenged findings only to determine whether they are supported by competent evidence. *Id.* at __, 815 S.E.2d at 397. "On appeal from an opinion and award of the Commission, findings of fact are conclusive if they are supported by any competent evidence in the record, even if there is evidence that would support findings to the contrary." *Lewis v. Orkand Corp.*, 147 N.C. App. 742, 744, 556 S.E.2d 685, 687 (2001) (citing *Adams*, 349 N.C. at 681, 509 S.E.2d at 414).

In the instant case, finding of fact 42 was supported by competent evidence. The finding that defendants did nothing to "prevent plaintiff from selecting her own physicians or otherwise act in her best interests with respect to medical, indemnity, and other benefits under the Act[,]" and that plaintiff "did not detrimentally rely on any [ ] misrepresentations from defendants which prejudiced her claim" is supported by plaintiff's own testimony. Plaintiff testified that she sought out and received medical care other than that approved by defendants, including more than one visit

to Dr. Musante. Additionally, plaintiff testified that defendant-employer did not tell her that her claim was accepted.

Plaintiff argues that this Court's decision in *Garrett I* compelled the Commission to address the specific facts and contentions plaintiff raised in her estoppel argument regarding the conduct of the nurse case manager that defendant-employer assigned to plaintiff's claim. Plaintiff argues that the Commission's finding of fact 42 is conclusory and does not contain findings sufficient to address her estoppel argument.

"It is well established the Commission is required to address all issues necessary to resolve a [p]laintiff's claim." *Patillo v. Goodyear Tire & Rubber Co.*, 251 N.C. App. 228, 241, 794 S.E.2d 906, 915 (2016) (citing *Joyner v. Rocky Mount Mills*, 92 N.C. App. 478, 482, 374 S.E.2d 610, 613 (1988)). In making its findings of fact, "the Commission may not wholly disregard or ignore the competent evidence before it." *Id.* at 248, 794 S.E.2d at 918 (citation omitted). "However, [t]he Commission is not required . . . to find facts as to all credible evidence and is not required to make findings as to every detail of the credible evidence. Instead the Commission must find those facts which are necessary to support its conclusions of law." *Id.* at 248, 794 S.E.2d at 918-19 (alterations in original) (internal quotation marks and citations omitted).

The Commission need not make factual findings addressing every facet of an argument raised by a party, so long as its conclusions of law and factual findings otherwise dispose of the issue before it. *See Garrett I* at __, 817 S.E.2d at 856 (rejecting plaintiff's similar argument that the Commission "failed to address" other specific arguments and testimony because this Court does not require the Commission to "make 'negative findings' to support its conclusion[s.]"); *Johnson v. S. Tire Sales & Serv.*, 152 N.C. App. 323, 327, 567 S.E.2d 773, 776 (2002) ("[I]f the evidence before the Commission is capable of supporting two contrary findings, the determination of the Commission is conclusive on appeal."), *disc. rev. denied*, 356 N.C. 437, 572 S.E.2d 784 (2002), *rev'd on other grounds*, 358 N.C. 701, 599 S.E.2d 508 (2004); *Boylan v. Verizon Wireless*, 224 N.C. App. 436, 443, 736 S.E.2d 773, 778 (2012) (internal quotation marks omitted) (citation omitted) ("The Full Commission must make definitive findings to determine the critical issues raised by the evidence, and in doing so must indicate in its findings that it has 'considered or weighed' all testimony with respect to the critical issues in the case. It is not, however, necessary that the Full Commission make exhaustive findings as to each statement made by any given witness or make findings rejecting specific evidence that may be contrary to the evidence accepted by the Full Commission. . . . Such 'negative' findings are not required."). Thus, the Commission was not required to address plaintiff's specific allegations related to the nurse case manager, so long as its conclusion of law that

defendants were not estopped from denying liability was supported by alternative findings otherwise dispositive of the estoppel issue. *See Boylan* at 443, 736 S.E.2d at 778.

The Commission made such an alternative disposition of plaintiff's estoppel argument. The Commission's conclusion of law that plaintiff failed to meet her burden of proving several elements of her estoppel claim is supported by its finding that she did not detrimentally rely on defendant-employer's alleged misrepresentations. In turn, this finding is supported by competent evidence that plaintiff sought additional care and second opinions from medical providers other than those authorized by defendant-employer.

Assuming *arguendo* that the Commission did not adequately address plaintiff's specific allegations that defendant-employer's assignment of a nurse case manager to her claim induced her to believe that her worker's compensation claim for her back injury was accepted, the Commission found that her estoppel argument otherwise failed, because "plaintiff did not detrimentally rely on any [ ] misrepresentation from defendants which prejudiced her claim" and did not meet her burden of presenting evidence to the contrary. This finding is supported by competent evidence in the record. The Commission's finding that plaintiff did not detrimentally rely on any conduct or representations of defendants disposed of plaintiff's estoppel argument

and obviated the need to furnish detailed findings negating plaintiff's specific theory of estoppel.

B. Determination of No Disability from 13 May 2014 to 16 July 2015

Next, plaintiff argues that the Commission erred on remand by reversing its prior disability determination and concluding that plaintiff was not disabled between 13 May 2014 and 16 July 2015. Plaintiff contends that the Commission erred by: (1) concluding as a matter of law that she was required to engage in a job search to establish her disability during the relevant period; and (2) basing its conclusion that she was not disabled on inadequate findings of fact otherwise unsupported by competent evidence. We address each argument in turn.

1. Failure to Conduct Reasonable Job Search

Plaintiff contends that the Commission erred by "wrongly conclud[ing] that she was required, as a matter of law, to engage in an outside job search in order to establish that she was disabled for the time period in question." This argument is without merit.

"The Commission's conclusions of law are reviewed *de novo*." *Penegar* at __, 815 S.E.2d at 394 (citation omitted).

> A determination of disability is a conclusion of law we review de novo. . . . "Disability" is defined as an "incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment." [N.C. Gen. Stat.] § 97-2(9) (2017). To support a conclusion of disability, "the Commission must

> find: (1) that plaintiff was incapable after his injury of earning the same wages he had earned before his injury in the same employment, (2) that plaintiff was incapable after his injury of earning the same wages he had earned before his injury in any other employment, and (3) that this individual's incapacity to earn was caused by plaintiff's injury." *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1982) (citing [N.C. Gen. Stat.] § 97-2(9)). The plaintiff bears the burden of proof to establish disability, but once the plaintiff has done so, the burden shifts to the defendant "to show not only that suitable jobs are available, but also that the plaintiff is capable of getting one, taking into account both physical and vocational limitations." *Wilkes v. City of Greenville*, 369 N.C. 730, 745, 799 S.E.2d 838, 849 (2017) (citations omitted).

*Garrett I at* __, 817 S.E.2d at 853. A worker's compensation claimant can establish the first two elements of disability through:

> (1) the production of medical evidence that 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 he is capable of some work, but that he has, after a reasonable effort on his part, been unsuccessful in his effort to obtain employment; (3) the production of evidence that 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 he has obtained other employment at a wage less than that earned prior to the injury.

*Russell v. Lowes Prod. Distrib.*, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993) (internal citations omitted). "An employee can prove the first two statutory elements through any of the four methods listed in *Russell*, 'but these methods are neither

statutory nor exhaustive.' " *Patillo* at 236-37, 794 S.E.2d at 912 (quoting *Medlin v. Weaver Cooke Constr., LLC*, 367 N.C. 414, 422, 760 S.E.2d 732, 737 (2014)).

In support of her argument, plaintiff claims that this Court's decision in *Patillo* supports her position that an injured employee need not search for jobs other than positions with her current employer, where the employee's union contract would trigger termination if the employee accepted outside employment during medical leave. Plaintiff mischaracterizes our holding in *Patillo*. In *Patillo*, where the injured employee worked for defendant-employer under the same union contract as plaintiff, we remanded to the Commission to enter findings of fact that were not conclusory and sufficiently explained its determination that the employee's job search was not "reasonable." *Id.* at 239-41, 794 S.E.2d at 914. We did not reach the issue of whether an outside job search was required, as a matter of law, for the employee's job search to be reasonable under the circumstances. *Id.* at 241, 794 S.E.2d at 914-15.

Plaintiff's reliance on *Snyder v. Goodyear Tire & Rubber Co.*, No. COA16-309, 2017 WL 900050, 796 S.E.2d 539 (2017) (unpublished), is likewise misplaced. In *Snyder*, we simply deferred to the Commission's determination that the plaintiff had engaged in a reasonable job search, based upon its finding that: the plaintiff's doctors had ordered restrictions on the amount of weight he could lift; "[the p]laintiff had made himself available to [defendant-employer] for work within his restrictions; retained the 'rights and privileges of an employee' of [defendant-employer]; had not

yet reached maximum medical improvement; and had a reasonable expectation of returning to his work with [defendant-employer] after his healing period was completed." *Id.* at *4. *Snyder* is unpublished and therefore does not bind this Court. N.C.R. App. P. 30(e)(3) (2019). Moreover, *Snyder* is distinguishable from the instant case because plaintiff has reached maximum medical improvement and has attempted to avoid returning to her pre-injury position, which her doctors have approved as within her physical capabilities.

Rather than establishing any fact-specific rule, *Patillo* reiterated that we will defer to the Commission in its determination of whether or not a claimant engaged in a reasonable job search, so long as: (a) the Commission's conclusion is based upon findings that are not conclusory and sufficiently explain its determination; and (b) such findings are supported by competent evidence in the record. *Patillo* at 239-41, 794 S.E.2d at 914. In the instant case, the Commission has met this standard.

In the present case, the Commission's findings of fact were not conclusory. The Commission entered findings of fact 31-41 in support of its determination that plaintiff was not disabled. These factual findings included:

> 37. Plaintiff's physicians never completely wrote her out of work due to her work-related injury. After defendant-employer no longer accommodated her light duty restrictions on May 13, 2014, plaintiff did not immediately commence a job search. The record contains no evidence of a job search until after the independent medical examination for defendant-employer's A&S carrier with Dr. Wilson on

January 29, 2015, where he assigned sedentary restrictions. Thereafter, plaintiff looked for sedentary-duty work by opening the telephone book and calling employers that she believed would offer sit/stand work. She also testified that she asked friends for work. Plaintiff did not substantiate her claim of having conducted a reasonable job search through the introduction of job applications or a job search log, and she could not recall the names of any companies with which she sought employment. Accordingly, the Full Commission finds plaintiff has failed to present sufficient evidence that she made reasonable efforts to obtain employment after May 13, 2014.

. . . .

40. Plaintiff testified that she loved working for defendant-employer and did not want to obtain a lower paying job with a different employer. She further testified that, as a member of the Local Number 959 Union, her employment with defendant-employer would have been terminated had she accepted a job with a different employer. The Commission places little weight on plaintiff's testimony in this regard. Despite stating that she loved her job and wanted to continue her employment with defendant-employer, plaintiff declined the offer to return to the Production Service Carcass Trucker position approved by Drs. Kishbaugh and Musante as being within her work restrictions. Moreover, plaintiff presented no evidence that she attempted to bid for other positions with defendant-employer to maintain her employment with defendant-employer after refusing the offer to return to her pre-injury position.

The Commission also found that "Dr. Musante testified that plaintiff is capable of much more than sedentary-duty work, . . . [and] would allow plaintiff to return to work . . . in her pre-injury position[.]"

These findings provide a detailed basis for the Commission's determination that plaintiff did not engage in a reasonable job search. Plaintiff was capable of non-sedentary work, yet only searched for sedentary work. Moreover, plaintiff did not produce evidence corroborating her job search, which was uninspired even as described in her own testimony. To the extent that plaintiff questions the credibility afforded by the Commission to her statements regarding the stifling effect of her union contract on her efforts to search for outside employment, we will not engage in a reweighing of the evidence before the Commission. *See Patillo* at 248, 794 S.E.2d at 918 (citation omitted) ("It is exclusively within the Commission's province to determine the credibility of the witnesses and the evidence and the weight each is to receive."). Weighing the effect of plaintiff's union contract on her job search was within the Commission's authority as finder of fact. Therefore, because the record is replete with competent evidence supporting the above findings of fact, *see infra* section 2, we affirm the Commission's conclusion of law that plaintiff was not disabled between 13 May 2014 and 16 July 2015.

2. Other Challenges to the Commission's Disability Determination

Regarding the findings of fact relevant to the Commission's disability determination, plaintiff makes several arguments, none of which we find convincing. Plaintiff first argues that the Commission's new findings of fact were insufficient to support its new disability conclusion because they were irrelevant to this Court's instructions on remand for the Commission to make findings of fact regarding plaintiff's wage-earning capacity. In essence, plaintiff suggests that the Commission should have simply entered new findings of fact bolstering its prior conclusion on disability, without reengaging in legal analysis and reaching a new conclusion based on its new findings of fact. This would be contrary to the spirit of our instructions to the Commission. Conclusions of law are reached based upon findings of fact, not vice versa.

Finally, plaintiff argues that the Commission otherwise erred because its findings of fact entered in support of its conclusion that plaintiff was not disabled during the relevant period are not supported by competent evidence. In view of the fact that plaintiff has not developed this argument past bare assertion, it should suffice to say that we are not convinced. The record contains competent evidence upon which to base the relevant findings of fact 31-41, which in turn support the Commission's conclusion that plaintiff was not disabled during the relevant period.

Nonetheless, we will address the most pertinent of these findings and their evidentiary bases. Finding of fact 37, discussed *supra* section 1, is supported by

competent evidence. It is based upon plaintiff's own testimony on her job search and the Commission's finding that she did not produce any additional evidence to substantiate her job search. In a worker's compensation case, the plaintiff bears the initial burden of producing evidence supporting the three disability factors in *Hilliard*. *Coppley v. PPG Indus., Inc.*, 133 N.C. App. 631, 634-35, 516 S.E.2d 184, 187 (1999). Plaintiff has pointed to no evidence in the record substantiating her job search other than her own testimony, which the Commission gave little weight. Thus, the Commission's finding on this matter was sufficient.

Finding of fact 38 states:

> 38. In terms of her educational and vocational background, plaintiff completed high school, conducted administrative job duties while in the Navy, utilized defendant-employer's computers in her pre-injury job, and used a home computer. The Full Commission finds that plaintiff did not present sufficient evidence of pre-existing conditions such as age, experience, or lack of education that would have made a reasonable job search futile after May 13, 2014. Further, the record contains no evidence that plaintiff secured work at a lower wage than her pre-injury job.

This finding of fact is supported by plaintiff's own testimony that she completed high school, was a yeoman in the navy, and frequently entered information into computers as part of her job. Thus, it is supported by competent evidence.

Finding of fact 39 states:

> 39. At the hearing before the Deputy Commissioner, plaintiff testified that, in response to receiving the July 16, 2015 letter from defendant-employer offering her a return to work in her pre-injury job, she contacted both Dr. Musante and her primary care physician to obtain notes keeping her out of work. Plaintiff testified that she "can't be bounced around like that." Plaintiff testified that she can turn her head, but she did not want to return to work as a carcass trucker because of the bouncing nature of the truck, and she refused defendant-employer's job offer.

This finding paraphrases plaintiff's own testimony before the Commission, and thus is based upon competent evidence. *See Peoples v. Cone Mills Corp.*, 316 N.C. 426, 442 n.7, 342 S.E.2d 798, 808 n.7 (1986) (stating that our courts "interpret the Commission's practice of reciting testimony to mean that it does find the recited testimony to be a fact").

In finding of fact 40, discussed *supra* section 1, the Commission recited plaintiff's testimony on her desire to continue working for defendant-employer and the effect of her union contract on her outside job search. The Commission "place[d] little weight on [this] testimony," and noted that plaintiff had presented no evidence that she attempted to find another job with defendant-employer after refusing its offer to return to her pre-injury position. Reweighing evidence before the Commission and discerning the credibility of witnesses is beyond the scope of our review. *See Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965) ("The Commission is the sole judge of the credibility of the witnesses and the weight

to be given their testimony."). Based on plaintiff's testimony, the Commission was within its discretion to make its own determination as to whether or not plaintiff's union contract had any real effect on her efforts to obtain alternative employment.

Finding of fact 41 is actually a conclusion of law that plaintiff "failed to establish disability occasioned by her work-related injury after May 13, 2014." However, this conclusion of law is supported by the above mentioned findings of fact, which are based upon competent evidence, and other undisputed findings of fact which are binding on appeal.

## III. Conclusion

For the foregoing reasons, we affirm the opinion and award of the Commission.

AFFIRMED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).