IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-107

Filed 16 January 2024

N.C. Industrial Commission, No. 14-009286

LAYMAN L. HORSEY, Employee, Plaintiff,

v.

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

Appeal by Defendants from judgment entered 1 November 2022 by the N.C. Industrial Commission. Heard in the Court of Appeals 20 September 2023.

Lennon, Camak & Bertics, PLLC, by Michael W. Bertics, for the Plaintiff-Appellee.

Hedrick, Gardner, Kincheloe & Garofalo, LLP, by M. Duane Jones and Matthew J. Ledwith for the Defendant-Appellant.

WOOD, Judge.

Goodyear Tire & Rubber Company ("Employer") and Liberty Mutual Insurance Company ("Carrier") (collectively "Defendants") appeal from an opinion and award of the North Carolina Industrial Commission ("the Commission") affirming Layman L. Horsey's ("Plaintiff") claim and concluding Plaintiff was entitled to change his treating physician and receive temporary disability benefits. After careful review, we

affirm the Commission's Opinion and Award.

I. Factual and Procedural Background

After serving in the United States military and working for the City of Fayetteville, Plaintiff obtained a job with Employer's predecessor, Kelly Tires, in 1996. On 6 March 2014, Plaintiff injured his neck and right shoulder while working as a tread booker.

Plaintiff was initially treated at Employer's onsite medical clinic and was placed on light duty for thirty days. When his condition did not improve, Plaintiff was scheduled for an MRI on his shoulder and referred to Dr. Szura, a board-certified orthopedist with a subspecialty in sports medicine. Dr. Szura began treating Plaintiff on 9 January 2015. Although Dr. Szura practices "general orthopedics," forty percent of his practice is devoted to shoulder injuries and resulting conditions. In total, Dr. Szura performed three surgeries on Plaintiff's shoulders. Specifically, Dr. Szura performed a right shoulder open rotator cuff repair, debridement, synovectomy, distal clavicle resection, and subacromial decompression on 25 February 2015.

On 6 March 2015, Defendants filed a Form 60 Employer's Admission of Employee's Right to Compensation for a 6 March 2014 compensable injury to Plaintiff's "right side neck & shoulder." Defendants accepted the compensability of Plaintiff's injury and, when he became disabled due to the injury, commenced disability payments effective 25 February 2015. On 20 March 2015, Defendants amended Form 60 to reflect Plaintiff's correct average weekly wage and compensation

rate and described the compensable conditions as "Strain to Right Side of Neck and Shoulder." On 16 September 2015, Dr. Szura performed a synovectomy, debridement, bursectomy, and manipulation on Plaintiff's right shoulder and later performed a left shoulder open rotator cuff repair, debridement, synovectomy, distal clavicle resection, and subacromial decompression on 28 September 2016. Plaintiff participated in physical therapy following each surgery.

On 7 March 2017, Dr. Szura ordered a functional capacity evaluation ("FCE") to determine Plaintiff's permanent work restrictions. On 22 March 2017, Plaintiff underwent an FCE performed by Frank Murray, ("Mr. Murray") a physical therapist, who provides physical therapy for work injuries, develops functional job descriptions, performs FCEs, and return to work evaluations for Defendant Employer.

The FCE determined Plaintiff could

> carry up to seventy pounds occasionally, forty pounds frequently, and twenty-five pounds constantly; lift to the waist up to fifty pounds occasionally, forty pounds frequently, and thirty pounds constantly; lift to the shoulder up to thirty-five pounds occasionally, twenty pounds frequently, and ten pounds constantly; push/pull up to 162 pounds occasionally and forty pounds constantly; and grip eighty-two pounds occasionally and twenty pounds constantly.

However, the FCE indicated Plaintiff "does not have the physical ability to return to his regular job as a tread booker" but has "the physical ability to perform a number of other jobs in the plant." The FCE recommended that a "job match should be performed using the associate as a guideline in determining which of the available

jobs at the [Employer's] plant will match [Plaintiff's] current level of function."

On 11 April 2017, Dr. Szura determined, at a follow-up appointment for the FCE review, that Plaintiff had reached maximum medical improvement ("MMI") for both his right and left shoulders and that permanent work restrictions should be provided for Plaintiff consistent with the FCE. On 4 May 2017, Dr. Szura assigned permanent impairment ratings of seventeen percent to Plaintiff's right arm and fifteen percent to his left arm.

Defendants performed a job match for Plaintiff based upon the permanent work restrictions. In August 2017, Plaintiff initially returned to work in a position operating a forklift, but he was unable to perform that job due to substantial pain and went out of work again. On 12 March 2018, Plaintiff successfully completed the test for the Repair Green Tire and Stock ("green tire") position and returned to work in that position on 18 March 2018. This position involved "transferring skids of scrap material from the tire fabrication machines to a different part of the facility using a fork truck." The written job description for the green tire position does not list any job demands outside of the restrictions of Plaintiff's FCE.

After Plaintiff returned to work in the green tire position, Employer consolidated a variety of other jobs in the tire room, which required a different set of employees to stack the scrap material Plaintiff was responsible for transporting. According to Plaintiff, as a result of these changes, the materials were not properly stacked on the skids. Plaintiff's supervisor, Mr. Smith, instructed Plaintiff to pull

apart stuck rubber and properly stack the scrap material on the skids, which required actions outside of Plaintiff's job restrictions. Plaintiff alleged Mr. Smith refused to eliminate such duties from Plaintiff's job responsibilities as Plaintiff was told to "[e]ither do the job or go home," so Plaintiff complied with his supervisor's orders.

On 20 August 2018, Plaintiff visited Employer's onsite medical clinic and reported pain in both shoulders resulting from Employer adding "a new duty to [his] job description." The medical note from the appointment indicates Plaintiff reported the additional tasks outside of his restrictions to Mr. Murray and Plaintiff's managers.

On 10 October 2018, Plaintiff requested Employer's onsite clinic set up an appointment with Dr. Szura due to "sharp pains" in both shoulders. Plaintiff continued to report that he was performing work outside his job restrictions and had spoken to Mr. Murry "about it again and he was going to talk to the department, but nothing has changed." According to Mr. Murray, on an unknown date, he spoke with Mr. Sariff, Defendant's Business Center Manager, about Plaintiff's concerns that his work was outside his restrictions and that the issue needed to be corrected to avoid the risk of additional injury. In another instance, Mr. Murray alleged Plaintiff was instructed by Mr. Sariff not to do anything he "wasn't supposed to be doing" concerning his job description.

On 29 March 2019, Plaintiff returned to Dr. Szura who noted Plaintiff complained of bilateral shoulder pain radiating into his upper arm, intermittent

numbness and tingling to his right hand, painful popping in both shoulders, limited overhead range of motion in both shoulders, and had difficulty "turning a steering wheel at times." However, Dr. Szura's medical notes indicated Plaintiff's shoulder x-ray showed no significant evidence of degeneration since the 2016 surgery and Plaintiff reported his belief that his work did not exceed the restrictions in place. After Plaintiff's examination, Dr. Szura indicated there had been no progressive degeneration or arthropathy in either shoulder, but Plaintiff would likely continue to experience discomfort in both shoulders with prolonged use due to his history of shoulder surgeries. Dr. Szura's medical notes stated Plaintiff's work restrictions should remain the same, and Dr. Szura offered no additional orthopedic treatments to Plaintiff.

On 27 August 2019, Plaintiff, on his own initiative, received a second opinion from Dr. Wilson to address his complaints of shoulder pain, neck pain, and numbness in his hand. Dr. Wilson examined Plaintiff, noting 10 degrees of limitation of forward flexion and 10 degrees of limitation of external motion of Plaintiff's right arm, as well as some weakness with rotator cuff testing. Following the examination, Dr. Wilson's medical notes stated, "I believe the current issues he is having [are] related to the original work comp injury that happened." He recommended MRIs of Plaintiff's neck and right shoulder but did not suggest any job restrictions.

On 3 February 2020, the parties entered into a Consent Order, where Defendants authorized the MRI evaluations and a corticosteroid injection

recommended by Dr. Wilson. The Consent Order explicitly stated that the "authorization is made without prejudice and does not constitute a formal selection of [Dr. Wilson] as the authorized treating physician for [P]laintiff's compensable conditions." The Consent Order also indicated that after the procedures were completed, "if the parties are unable to reach an agreement regarding the course of [P]laintiff's medical care, the [P]laintiff may file a medical motion."

Plaintiff continued to work in the green tire position until Defendant closed its facility due to COVID-19 in late March 2020. On 31 March 2020, Dr. Wilson provided work restrictions for Plaintiff, stating he should be restricted to sedentary work with no use of the right arm.

After undergoing the MRIs approved in the Consent Order on 15 April 2020, Plaintiff met with Dr. Wilson during a telemedicine appointment to discuss the results. Plaintiff continued to report significant pain and discomfort in both shoulders in addition to ongoing neck pain. Based on Dr. Wilson's interpretation of the MRIs, he recommended Plaintiff undergo right shoulder surgery to address a right shoulder rotator cuff partial thickness tear and biceps tendon issues. Dr. Wilson also again recommended Plaintiff should be restricted to sedentary work with no use of the right arm.

When Defendant's facility reopened on 26 May 2020, Plaintiff presented sedentary work restrictions recommended by Dr. Wilson. Plaintiff met with Ms. Flantos, Employer's workers' compensation manager, who advised him the plant was

unable to accommodate Dr. Wilson's restrictions. Plaintiff remained out of work. Subsequently, Plaintiff received accident and sickness benefits through Employer's short-term disability coverage from 27 May 2020 through 14 September 2020. Plaintiff then began drawing from his social security retirement benefits.

On 20 July 2020, Defendants filed a Form 61 which disputed and denied: (1) Plaintiff's cervical and radicular complaints are related to the 6 March 2014 incident; (2) Plaintiff's claim of disability as a result of the incident; (3) Plaintiff's request for medical compensation; and (4) the current condition of Plaintiff's right shoulder is causally related to the 6 March 2014 event but they "continue to provide care voluntarily and without prejudice with Dr. Brian Szura."

On 13 August 2020, Plaintiff returned to Dr. Szura and continued to complain of shoulder pain. Plaintiff reported he had previously returned to work within his restrictions, but in 2019, his work requirements were changed to include duties outside of his permanent work restrictions. Dr. Szura's review of Plaintiff's shoulder MRIs noted intact rotator cuff repairs with no atrophy, mild degeneration, and no significant labral pathology. Dr. Szura opined Plaintiff's symptoms were "most consistent with probably [sic] myofascial pain" and did not recommend additional surgical intervention. However, Dr. Szura's note states that Plaintiff was experiencing limitations in both his right and left shoulder range of motion, but no atrophy. Plaintiff reported to Dr. Szura he believed that he could perform his prior position with Defendant.

On 2 October 2020, Plaintiff filed a Form 33 request for a hearing due to Defendants' failure to accommodate restrictions and refusal to authorize treatment with Dr. Wilson. On 14 October 2020, the parties entered into a pre-trial agreement. The pre-trial agreement contained the following stipulations and undisputed facts: "In May of 2020, [Employer] received the restrictions assigned by [Dr. Wilson] and did not accommodate these restrictions. [Employer] instead offered a return to Plaintiff's regular employment position which he refused." The pre-trial agreement listed a number of contested issues to be decided by the North Carolina Industrial Commission including whether Dr. Wilson should be designated as Plaintiff's authorized treating physician; what course of treatment Plaintiff should receive; whether Defendants have provided adequate treatment to provide Plaintiff with relief from his work-related injuries; and whether Defendants assigned Plaintiff work within his medical limitations in May 2020.

On 10 December 2020, Plaintiff participated in a teleconference call with members of Defendant's staff, including Mr. Murray, Ms. Flantos, and Plaintiff's supervisor, Mr. Lamonte Hose. During the teleconference, Plaintiff was instructed that he was not to perform tasks outside the job description for the green tire position. Specifically, when Plaintiff encountered stuck rubber, he was to report it to his supervisor instead of pulling it apart.

Following the call, Employer advised Plaintiff of alternative positions available at the plant which would be performed within Plaintiff's restrictions. On 17

December 2020, Plaintiff informed Employer he would be retiring effective 31 December 2020. On 22 December 2020, Defendants offered Plaintiff the green tire position and additionally provided the alternate positions Employer had identified. Plaintiff did not respond to Defendants' offer of additional employment.

The case was initially heard on 8 January 2021 before Deputy Commissioner Peaslee. Plaintiff, Ms. Flantos, and Mr. Hose testified. Following the hearing, the parties took the depositions of Dr. Szura, Dr. Wilson, and Mr. Murray. On 6 December 2021, Deputy Commissioner Peaslee entered an opinion and award denying Plaintiff's request to have Dr. Wilson designated as his authorized treating physician, denying Plaintiff's claim for additional disability compensation, and ordering Defendants to authorize additional conservative medical treatment for Plaintiff's shoulders per Dr. Szura's recommendation. On 14 December 2021, Plaintiff filed a notice of appeal to the Full Commission.

The Full Commission held a hearing on 5 May 2022 and, on 1 November 2022, entered its Opinion and Award. In its Opinion and Award, the Commission stated the following:

> The Full Commission finds that Plaintiff sustained an exacerbation of his 6 March 2014 injury when Plaintiff's supervisor requested that he perform work outside of his written job description and permanent restrictions. Both Dr. Szura and Dr. Wilson opined that Plaintiff experienced additional shoulder issues after performing such work, although they disagreed regarding the exact degree of exacerbation Plaintiff experienced—myofascial pain versus partial thickness rotator cuff tears. The Full

> Commission finds that as a result of performing work outside his restrictions, Plaintiff developed additional pain and symptoms in his shoulders that require additional medical treatment.

The Full Commission determined Plaintiff had presented "sufficient evidence that a change in treating provider from Dr. Szura is reasonably necessary to effect a cure, provide relief, or lessen the period of disability." The Full Commission noted, "following the exacerbation of Plaintiff's 6 March 2014 injury when Plaintiff's supervisor requested that he perform work outside of his written job description and permanent restrictions, Dr. Szura failed to adequately address Plaintiff's ongoing pain and noted limited range of motion."

The Full Commission also noted, "Dr. Wilson did not review any of Plaintiff's prior medical records before recommending surgery, instead he relied solely on Plaintiff's recitation of his medical history—some of which was inaccurate." As a result, the Full Commission found, in their discretion, "Plaintiff's future medical treatment to address his ongoing bilateral shoulder issues should be provided by a provider other than Dr. Szura or Dr. Wilson." All parties were directed to make reasonable efforts to agree upon a new medical specialist to assume Plaintiff's care.

In addition, the Full Commission found "Plaintiff was unable to earn wages from 26 May 2020 to 31 December 2020 due to the exacerbation of his bilateral shoulder condition while performing additional tasks of the [green tire] position, which exceeded his work restrictions." The Full Commission found that although

Plaintiff "reasonably relied" upon Dr. Wilson's sedentary work restrictions which prevented him from returning to work from 26 May 2020 through 31 December 2020, Plaintiff failed to establish that such restrictions continue to be medically necessary. The Full Commission ordered Defendants to pay Plaintiff temporary total disability benefits from 26 May 2020 through 31 December 2020. On 1 December 2022, Defendants filed a notice of appeal to this Court. Plaintiff did not appeal.

II. Standard of Review

Appellate review of the Full Industrial Commission's Opinion and Award is limited to "consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law." *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008). Furthermore, "the Industrial Commission's conclusions of law are reviewable *de novo* by this Court." *Lewis v. Sonoco Prods. Co.*, 137 N.C. App. 61, 68, 526 S.E.2d 671, 675 (2000) (citation omitted).

The Commission "is the sole judge of the credibility of the witnesses and the weight of the evidence." *Hassell v. Onslow Cty. Bd. Of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008) (citations omitted). The appellate court may not re-weigh the evidence or the Commission's determinations regarding the credibility of witnesses. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). All findings of fact shall be conclusive and binding upon review of the Commission if there is any competent evidence to support the finding. *Id.* "Findings not supported by competent

evidence are not conclusive and will be set aside on appeal." *Penland v. Bird Coal Co.*, 246 N.C. 26, 30, 97 S.E.2d 432, 436 (1957). Conclusions of law are reviewed *de novo*. *Id.*

III. Analysis

Defendants contend the Full Commission erred in determining (1) Plaintiff is entitled to a change in treating physicians; and (2) Plaintiff is entitled to disability benefits. We review each argument in turn.

A. Plaintiff's entitlement to a change in treating physicians.

In arguing the Full Commission erred in determining that Plaintiff is entitled to a change in treating physicians, Defendants challenge finding of fact 25.

In finding of fact 25, the Full Commission found:

> Based upon the preponderance of evidence in view of the entire record, the Full Commission finds that a change in Plaintiff's authorized treating provider is reasonably necessary to effect a cure, provide relief, or lessen the period of disability, but such care should not be provided by Dr. Wilson. In making this finding, the Full Commission notes that following the exacerbation of Plaintiff's 6 March 2014 injury when Plaintiff's supervisor requested that he perform work outside of his written job description and permanent restrictions, Dr. Szura failed to adequately address Plaintiff's ongoing pain and noted limited range of motion. However, the Full Commission notes that Dr. Wilson did not review any of Plaintiff's prior medical records before recommending surgery, instead he relied solely on Plaintiff's recitation of his medical history—some of which was inaccurate. As such, the Full Commission, in its discretion, finds that Plaintiff's future medical treatment to address his ongoing bilateral shoulder issues should be provided by a provider other

than Dr. Szura or Dr. Wilson.

Defendants argue this finding "prejudiced Defendants' right to direct Plaintiff's medical care" pursuant to N.C. Gen. Stat. § 97-25(a) and is "unsupported by any competent evidence." We disagree.

Generally, "an employer's right to direct medical treatment (including the right to select the treating physician) attaches once the employer accepts the claim as compensable." *Kanipe v. Lane Upholstery*, 141 N.C. App. 620, 624, 540 S.E.2d 785, 788 (2000). However, that right is not unlimited, as the employee, if he so desires, may also "select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission." N.C. Gen. Stat. § 97-25(c) (2023). This provision allows an employee, even in the absence of an emergency, the right to choose their own physician. *Schofield v. Great Atl. & Pac. Tea Co., Inc.*, 299 N.C. 582, 591, 264 S.E.2d 56, 62 (1980).

The burden to prove the necessity of a change of treating physicians is on the employee.

> In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability.

N.C. Gen. Stat. § 97-25(c) (2023). We note that the Commission has broad discretion in approving a change of treating physician. *See Franklin v. Broyhill Furniture*

Indus., 123 N.C. App. 200, 207, 472 S.E.2d 382, 387 (1996). For example, when an employee continues to experience pain that the approved treating physician is unable or unwilling to treat, we have held adequate justification exists to warrant a change of treating physician. *See Lakey v. U.S. Airways, Inc.*, 155 N.C. App. 169, 174, 573 S.E.2d 703, 707 (2002).

In the present case, since the March 2018 exacerbation of his compensable shoulder injury, Plaintiff has complained of continued shoulder pain to the treating medical personnel associated with Defendants. In August 2018, a note from Employer's onsite clinic indicated Plaintiff reported pain in both shoulders linked to new duties that exceeded his work restrictions. After Plaintiff requested an appointment with Dr. Szura to address the bilateral shoulder pain, he saw Dr. Szura on 29 March 2019.

During this appointment, Dr. Szura noted Plaintiff had continued bilateral shoulder pain radiating into his upper arm, numbness, tingling, painful popping, and limited overhead range of motion. Following the examination Dr. Szura indicated Plaintiff was at MMI, stating "I have nothing further to offer from an orthopedic standpoint." Although acknowledging Plaintiff's pain in his medical records, Dr. Szura released Plaintiff to work and provided no alternative treatments. Dr. Szura's medical notes further provided: "hopefully his primary care physician can make some recommendations regarding the treatment of his persistent pain and symptoms. I believe this would be preferable to chronic pain referral."

Additionally, the record evidence shows while Dr. Szura had offered recommendations of physical therapy and cortisone injections for Plaintiff in August of 2020, such recommendations came a year after Dr. Szura met with Plaintiff about his continued shoulder pains and offered no treatment solutions. During this interim, Plaintiff sought a second opinion from Dr. Wilson, who advocated for more aggressive treatment solutions, because Plaintiff believed Dr. Szura's conservative approach for treatment was not working.

Thus, we conclude competent record evidence exists to support the Full Commission's finding of fact 25 and its decision granting Plaintiff's request to change his treating physician.

B. Plaintiff's entitlement to temporary total disability compensation.

Next, Defendants contend the Full Commission erred in determining Plaintiff is entitled to disability benefits and challenges finding of fact 27 as not supported by the competent record evidence.

The Workers' Compensation Act defines "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." N.C. Gen. Stat. § 97-2(9) (2023). In order to support a conclusion of disability, the Commission must determine that (1) plaintiff is incapable after injury of earning the same wages he earned before his injury in the same employment; (2) plaintiff is incapable after his injury of earning the same wages he earned before his injury in any other employment; and (3) plaintiff's incapacity to

earn was caused by the injury. *Hilliard v. Apex Cabinet Co.,* 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1982) (citation omitted).

Pursuant to *Hilliard*, employees can meet their burden in four ways: (1) producing medical evidence that they are physically or mentally incapable of work in any employment as a consequence of the work injury; (2) producing evidence that they are capable of some work, but have after a reasonable effort been unsuccessful at obtaining employment; (3) producing evidence that they are capable of some work but it would be futile because of preexisting conditions to seek other employment; or (4) production of evidence that they have obtained other employment at a wage less than that earned prior to the injury. *Russell v. Lowe's Prod. Distrib.,* 108 N.C. App. 762, 765-66, 425 S.E.2d 454, 457 (1993) (citations omitted).

Under *Russell,* there is no general rule for determining the reasonableness of an employee's job search. *Gonzalez v. Tidy Maids*, Inc., 239 N.C. App. 469, 480, 768 S.E.2d 886, 895 (2015) (citation omitted). Rather, the Commission possesses full discretion in deciding whether an employee made a reasonable effort to obtain employment. *Perkins v. U.S. Airways*, 177 N.C. App. 205, 214, 628 S.E.2d 402, 408 (2006). This court defers to the Commission, so long as the Commission's conclusion is based on findings that are not conclusory and sufficiently explain its determination, and such findings are supported by competent evidence in the record. *Patillo v. Goodyear Tire & Rubber Co.,* 251 N.C. App. 228, 239-41, 794 S.E.2d 906, 914 (2016).

In the challenged portions of finding of fact 27, the Commission found:

> . . . Plaintiff was unable to earn wages from 26 May 2020 to 31 December 2020 due to the exacerbation of his bilateral shoulder condition while performing additional tasks of the [green tire] position, which exceeded his work restrictions. During this time, Plaintiff reasonably relied on the sedentary restrictions provided by Dr. Wilson . . . [in deciding not to return to work in the green tire position when the plant reopened].

Defendants argue they

> do not concede that Plaintiff experienced an exacerbation of his shoulder condition while performing his job, but they do accept that there is competent evidence in the record to support this finding. Defendants do contest, however, the existence of any competent evidence to support the Commission's determination that Plaintiff was unable to earn wages from 26 May 2020 through 31 December 2020 due to this exacerbation.

The record evidence clearly demonstrates Plaintiff reasonably relied on the sedentary work restrictions prescribed by Dr. Wilson. Additionally, it is clear Plaintiff continued to experience shoulder pain as reflected by Dr. Szura's medical notes from 13 August 2020 which stated significant range of motion loss on the right shoulder, especially with "forward flexion and side abduction." Furthermore, Dr. Wilson read the green tire job description and identified tasks he believed Plaintiff could not perform based upon his current physical state. Dr. Wilson testified that based on his diagnostic findings, in conjunction with Plaintiff's accounts of pain, the FCE restrictions from March 2017 were no longer accurate. Thus, after Plaintiff's injury was exacerbated in 2018, Dr. Wilson believed it was medically necessary for Plaintiff's work restrictions to be modified to account for the continued pain.

The evidence also shows that when Plaintiff returned to work on 26 May 2020, he presented a copy of Dr. Wilson's sedentary restrictions to Human Resources. A representative from Human Resources stated his Employer could not "accommodate it so all we can do is send you back out." In fact, the pre-trial agreement also reflects Employer "did not accommodate these restrictions." Because Plaintiff relied upon the work restrictions provided by Dr. Wilson, a physician Employer consented to Plaintiff seeing, Plaintiff reasonably relied upon Dr. Wilson's recommendations. Defendant Employer's failure to accommodate Plaintiff's medically determined restrictions required him to remain out of work. Therefore, sufficient record evidence exists to support the Full Commission's finding of fact 27 and its decision granting Plaintiff temporary total disability compensation.

IV. Conclusion

After a careful examination of the record before us and applicable law, we affirm the Full Commission's Opinion and Award.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).