IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-646

Filed: 5 April 2016

North Carolina Industrial Commission, I.C. No. 13-709822

FANNIE KEE, Employee, Plaintiff

v.

WAFFLE HOUSE, INC., Employer, SELF-INSURED (BRENTWOOD SERVICES, Third-Party Administrator), Defendant.

Appeal by defendants from opinion and award entered 27 April 2015. Heard in the Court of Appeals 16 November 2015.

Hardison & Cochran P.L.L.C., by J. Jackson Hardison, for plaintiff-appellee.

McAngus, Goudelock & Courie, P.L.L.C., by Trula R. Mitchell, for defendants-appellants.

DAVIS, Judge.

Waffle House, Inc. ("Waffle House") and its third-party administrator Brentwood Services (collectively "Defendants") appeal from the Industrial Commission's Opinion and Award determining that Fannie Kee ("Plaintiff") sustained a compensable injury by accident and awarding her medical and disability compensation. On appeal, Defendants contend that the Industrial Commission erred by (1) concluding that Plaintiff's claim was not time-barred; (2) determining that Plaintiff's injuries were causally related to her accident at work; and (3) awarding

Plaintiff temporary total disability benefits. After careful review, we affirm in part and reverse and remand in part.

Factual Background

Plaintiff is a 75-year-old woman who at the time of her injury was employed as a waitress at Waffle House. Plaintiff worked for Waffle House in this capacity in several of its various locations for approximately 23 years.

On or about 18 May 2010, Plaintiff was working a shift at the Waffle House in Tarboro, North Carolina, when she tripped over a telephone cord as she made her way from the grill area of the restaurant to the cash register in order to attend to a customer. She fell backwards and landed on her elbows with her right elbow and right hand taking the brunt of her weight and the force from her fall. Ershell Sharp, a customer who witnessed the fall, helped Plaintiff to her feet and saw that she was wincing in obvious pain. Plaintiff informed her store manager of the fall but did not seek medical treatment that day.

On 4 June 2010, Defendants filed a Form 19 with the Industrial Commission reporting Plaintiff's injury, describing the injury as occurring when Plaintiff "tripped on the phone cord and fell on her buttock and right arm" and stating that Plaintiff had "sustained [a] contusion from her right elbow to her right shoulder." The Form 19 listed 24 May 2010 as the date of injury.

On 8 June 2010, Plaintiff sought treatment at Pitt County Hospital for pain in her lower back and right arm, explaining to medical personnel that she had fallen at work two weeks earlier. Plaintiff was diagnosed with epicondylitis of the right arm. Several weeks later, Plaintiff visited the Duke University Medical Center Division of Orthopaedics for her arm pain. The physician's assistant who treated Plaintiff noted that she had been experiencing right arm pain following a fall at work that had occurred when she tripped over a telephone cord. The physician's assistant determined that Plaintiff was suffering from right elbow lateral epicondylitis and recommended physical therapy. Plaintiff underwent physical therapy sessions from August 2010 to November 2010, which were paid for by Defendants. Plaintiff continued working at the Waffle House during this time.

On 31 October 2011, Defendants sent Plaintiff to Dr. Michael Kushner, a neurologist at Wilson Orthopaedic Surgery and Neurology Center, for treatment. Plaintiff reported to Dr. Kushner that she had been experiencing pain for 17 months following her fall at work. Dr. Kushner performed an EMG and nerve conduction study on Plaintiff that showed nerve injuries, specifically "a slowing of the meridian nerve at the wrist" and injury "to the nerve supplying muscles in the hand that are supplied by the median nerve." Dr. Kushner recommended that Plaintiff wear a wrist splint and set a follow-up appointment for 1 February 2012.

During Plaintiff's follow-up visits on 1 February 2012 and 20 March 2012, Dr. Kushner noted that Plaintiff was still experiencing pain in her hand and that she had not yet received approval from Defendants' workers' compensation administrator to obtain a wrist splint. Dr. Kushner recommended that Plaintiff receive an orthopaedic hand evaluation to further assess her persistent pain and nerve damage.

In March 2012, Plaintiff was transferred to a new Waffle House restaurant in Nashville, North Carolina. During Plaintiff's employment at the Waffle House in Tarboro, she had worked the first shift, which was from 6:00 a.m. to 2:00 p.m. Plaintiff had explained to her managers that working the first shift allowed her to care in the afternoon for her husband and sister who were both older, had health problems, and needed her to transport them to various medical appointments. Soon after she began working at the Nashville Waffle House, she was informed that she would have to begin working the second shift, which was from 2:00 p.m. to 10:00 p.m., if she wanted to remain employed with Waffle House. On 19 March 2012, Plaintiff ended her employment with Waffle House by submitting a letter of resignation. Defendants discontinued medical payments to Plaintiff on 20 March 2012.

On 1 March 2013, Plaintiff filed a claim seeking workers' compensation benefits for injuries sustained to her right hand and arm. In her claim, Plaintiff listed 18 May 2010 as the date of injury. Defendants filed Forms 63 and 28B on 26 March

2013, which noted that they had previously paid Plaintiff $2,398.94 in medical compensation.

On 5 June 2013, Defendants filed a Form 61, denying Plaintiff's claim on the basis that the claim was untimely. Plaintiff requested that her claim be assigned for hearing, and on 17 December 2013 the matter was heard by Deputy Commissioner James C. Gillen. Following the hearing, Dr. Kushner, Dr. Harrison Tuttle ("Dr. Tuttle"), and Dr. George S. Edwards, Jr. ("Dr. Edwards") were deposed. On 27 June 2014, Deputy Commissioner Gillen entered an opinion and award determining that Plaintiff had sustained a compensable injury by accident and awarding her medical compensation and disability benefits. Defendants appealed to the Full Commission, and the Commission affirmed Deputy Commissioner Gillen's opinion and award on 9 March 2015.

On 12 March 2015, Plaintiff filed a motion to amend or supplement the Commission's opinion and award so as to designate Dr. Tuttle as Plaintiff's authorized treating physician. On 27 April 2015, the Commission filed an amended Opinion and Award. As in its initial opinion and award, the Commission's 27 April 2015 Opinion and Award awarded Plaintiff disability benefits and directed Defendants to pay all medical expenses incurred or to be incurred for Plaintiff's "right carpal tunnel syndrome, right cubital tunnel syndrome, and right lateral epicondylitis conditions." It further stated that "treatment for these compensable

right upper extremity conditions shall be provided by Dr. Tuttle, whom the Commission designates as the treating physician." Defendants filed a timely appeal to this Court.

Analysis

I. Timeliness of Plaintiff's Claim

Defendants first contend that Plaintiff's workers' compensation claim is time-barred by N.C. Gen. Stat. § 97-24(a) because although the underlying work-related accident occurred on 18 May 2010, she did not file her claim until 1 March 2013. N.C. Gen. Stat. § 97-24(a) states, in pertinent part, as follows:

> The right to compensation under this Article shall be forever barred unless (i) a claim . . . is filed with the Commission or the employee is paid compensation as provided under this Article within two years after the accident or (ii) a claim . . . is filed with the Commission within two years after the last payment of medical compensation when no other compensation has been paid and when the employer's liability has not otherwise been established under this Article.

N.C. Gen. Stat. § 97-24(a) (2015).

We conclude that although Plaintiff's claim seeking workers' compensation benefits was filed more than two years after her accident, her claim was nevertheless timely because it was brought within two years of the last payment of medical compensation as provided for in subpart (ii) of § 97-24(a).

Defendants argue that subpart (ii) does not apply to the present case because they paid medical compensation to Plaintiff (until 20 March 2012) for an injury that, according to their documentation, occurred on *24* May 2010. Defendants' Form 19 lists 24 May 2010 as the date of injury as does their Form 63, which was filed to document the fact that Defendants were paying medical benefits to Plaintiff for her injury without admitting to the compensability of the injury. Consequently, Defendants assert, they "never provided medical compensation for an injury of 18 May 2010," and, therefore, Plaintiff "was required to file her claim by 18 May 2012."

Although Plaintiff's claim for workers' compensation alleges that she was injured on 18 May 2010 — six days before the date of injury listed on Defendants' Form 19 and Form 63 — all of these documents clearly refer to the same incident. Plaintiff's claim describes her injury as having occurred when she "tripped over [a] telephone cord and landed on [her] right hand and arm," and Defendants' Form 19 states that the injury occurred when Plaintiff "tripped on the phone cord and fell on her buttock and right arm. [Plaintiff] sustained [a] contusion from her right elbow to her right shoulder."

Thus, despite the differing dates of injury noted on the respective forms, it is undisputed that (1) only one incident took place in May 2010 in which Plaintiff tripped and fell over a telephone cord; and (2) Defendants had been paying medical compensation to Plaintiff for injuries she sustained from that incident. The last

medical compensation payment Defendants made for the treatment of injuries stemming from this fall occurred on 20 March 2012. Plaintiff's claim was brought on 1 March 2013, which was within two years of that date and was therefore timely. N.C. Gen. Stat. § 97-24(a); *see also Crane v. Berry's Clean-Up & Landscaping, Inc.*, 169 N.C. App. 323, 329-30, 610 S.E.2d 464, 468 (concluding that plaintiff's claim was sufficient to constitute a claim for an injury occurring while changing a tractor tire where plaintiff listed the incorrect date of injury but "identified the specific incident at issue" by stating that the injury "was caused by changing a tractor tire on a company tractor"), *disc. review denied*, 359 N.C. 630, 616 S.E.2d 230 (2005).

II. Causation

Defendants next argue that Plaintiff failed to establish that her right arm injuries were causally related to her fall at work. For this reason, they contend that the Industrial Commission erred in concluding that Plaintiff's right carpal tunnel syndrome, right cubital tunnel syndrome, and right lateral epicondylitis were compensable injuries.

"Under the Workers' Compensation Act, the plaintiff bears the burden of producing competent evidence establishing each element of compensability, including a causal relationship between the work-related accident and his or her injury." *Williams v. Bank of Am.*, 226 N.C. App. 412, 423, 742 S.E.2d 227, 234 (2013) (citation, quotation marks, and brackets omitted). "[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." *McCrary v. King Bio, Inc.*, 225 N.C. 378, 382, 737 S.E.2d 761, 764 (2013) (citation omitted). A conclusion of law by the Industrial Commission that the employee's injury was causally related to her work-related accident is "fully reviewable" on appeal. *Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003). However, when multiple experts offer competent testimony on the issue of causation, the Commission is "the sole judge of the credibility and the evidentiary weight to be given to [each witness'] testimony." *Id.*

With regard to medical causation,

> our Supreme Court has created a spectrum by which to determine whether expert testimony is sufficient to establish causation in workers' compensation cases. Expert testimony that a work-related injury "could" or "might" have caused further injury is insufficient to prove causation when other evidence shows the testimony to be a guess or mere speculation. However, when expert testimony establishes that a work-related injury "likely" caused further injury, competent evidence exists to support a finding of causation.

Cannon v. Goodyear Tire & Rubber Co., 171 N.C. App. 254, 264, 614 S.E.2d 440, 446-47 (internal citations and select quotation marks omitted), *disc. review denied*, 360 N.C. 61, 621 S.E.2d 177 (2005).

Here, Defendants contend that the testimony of Dr. Tuttle, an orthopaedic

hand surgeon, and Dr. Kushner, a neurologist, opining that Plaintiff's injuries were caused by her fall at work was incompetent because their opinions were based on misconceptions regarding Plaintiff's symptomology and the mechanism of her injury. Defendants then assert that "Dr. Edwards' testimony supports a finding that causation is lacking in this matter" and that "the Commission erred in assigning more weight to the testimony of Dr. Tuttle and Dr. Kushner than Dr. Edwards."

In his deposition, Dr. Tuttle testified as follows regarding causation:

> Q. Okay. Doctor, tell us. Is it your opinion that the right lateral epicondylitis, right carpal tunnel syndrome, right cubital tunnel syndrome were caused by the May 2010 work-related fall onto her elbow?
>
> . . . .
>
> A. Yes is the quick answer, and I'm sure that's one of the things we're here to discuss. I think right epicondylitis is a direct result, and then the swelling thereafter likely caused the progression of the swelling, and the different use of the hand afterwords [sic] likely caused the right carpal tunnel syndrome and the right cubital tunnel syndrome.
>
> Q. So it is your opinion that more likely than not the cubital tunnel syndrome and carpal tunnel syndrome related to the elbow injury?
>
> . . . .
>
> A. Yes.
>
> Q. And are those opinions you just gave to a reasonable degree of medical certainty?

. . . .

A. Yes.

Dr. Kushner testified that Plaintiff's fall "set off" her carpal tunnel syndrome, which he described as "a little different from garden variety carpal tunnel syndrome" because its origin could be related back and identified to a specific trauma. Dr. Kushner testified to a reasonable degree of medical certainty that Plaintiff's fall at work caused the various symptoms she was experiencing in her right arm. Both Dr. Kushner and Dr. Tuttle testified that their opinions were based on their physical examinations of Plaintiff, the EMG test results, Plaintiff's reports of how the injury occurred and her symptoms, and their experiences treating other patients.

Conversely, Dr. Edwards, an orthopaedist, opined that the theory that Plaintiff developed carpal tunnel syndrome after — and as a result of — striking her elbow was not supported by empirical evidence. Indeed, Dr. Edwards did not believe that Plaintiff was suffering from either carpal tunnel or cubital tunnel syndrome and concluded that the only injury caused by the fall at work was the right elbow lateral epicondylitis.

In its Opinion and Award, the Commission chose to give greater weight to the opinions of Drs. Kushner and Tuttle than that of Dr. Edwards — a decision that was entirely within its purview. *See Adams v. Metals USA*, 168 N.C. App. 469, 483, 608 S.E.2d 357, 365 ("The decision concerning what weight to give expert evidence is a

duty for the Commission and not this Court."), *aff'd per curiam*, 360 N.C. 54, 619 S.E.2d 495 (2005). Based on Dr. Kushner's and Dr. Tuttle's testimony, the Commission concluded that Plaintiff's injuries were causally related to her fall at work and therefore compensable. We reject Defendants' assertion that their opinions must be disregarded because Plaintiff's lack of documented symptoms during certain medical visits refutes the theories of Dr. Tuttle and Dr. Kushner that Plaintiff's symptoms continuously progressed since the date of the injury. Both Dr. Tuttle and Dr. Kushner explained that the symptoms and pain related to carpal tunnel syndrome can dissipate and then return without any obvious provocation and that such "waxing and waning" of symptoms is common. Indeed, Dr. Tuttle specifically testified that Plaintiff's occasional lack of symptoms did not change his opinion on causation.

Defendants' contention as to the incompetency of Dr. Kushner's testimony on the subject of causation is also without merit. Defendants assert that Dr. Kushner's conclusion that Plaintiff's carpal tunnel syndrome and cubital tunnel syndrome were caused by her fall at work was based on the misconception that Plaintiff fell onto her wrist rather than onto her elbow. When Defendants' counsel explained that Plaintiff had reported falling on her elbow and that a wrist injury had not been documented, Dr. Kushner reevaluated his opinion but ultimately maintained that the fall set off Plaintiff's various right arm conditions. In explaining his opinion, Dr. Kushner stated

that blunt force trauma to the elbow can also cause medial nerve injury and carpal tunnel syndrome. He also explained that when individuals sustain injuries in an accident or trauma, "it is dangerous to assume that they know exactly what's injured and that the injury is limited." Ultimately, he concluded that the "initial trauma" of Plaintiff's fall at work — whether it involved direct injury to her wrist or merely to her elbow — caused her current symptoms. Dr. Kushner discussed the possibility of an unreported injury to her wrist but did not rely on this conjecture as the basis for his conclusion that there was a causal relationship between the fall in May 2010 and the subsequent carpal tunnel syndrome. Defendants' assertion that Dr. Kushner's testimony regarding a potential wrist injury rendered his causation opinion "unsound" is therefore overruled.

Thus, there was competent medical testimony to support the Commission's determination of causation. The decision to give less weight to expert testimony that would have supported a contrary finding was within the Commission's authority as "the sole judge of the weight and credibility of the evidence." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000).

III. Award of Disability Benefits

Defendants next assert that the Commission erred in awarding Plaintiff disability benefits "for the period from 20 March 2012 and continuing until [P]laintiff returns to work or further order of the Commission." Defendants contend that

Plaintiff's resignation from Waffle House on 20 March 2012 was a voluntary termination of her employment. We agree.

Pursuant to N.C. Gen. Stat. § 97-32,

> [i]f an injured employee refuses employment procured for him suitable to his capacity he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified.

N.C. Gen. Stat. § 97-32 (2009).[1]

This Court has held that when applying N.C. Gen. Stat. § 97-32,

> the first question is whether the plaintiff's employment was voluntarily or involuntarily terminated. If the termination is voluntary and the employer meets its burden of showing that a plaintiff unjustifiably refused suitable employment, then the employee is not entitled to any further benefits under N.C. Gen. Stat. §§ 97-29 or 97-30. If the departure is determined to be involuntary, the question becomes whether the termination amounted to a constructive refusal of suitable work under *Seagraves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996).

White v. Weyerhaeuser Co., 167 N.C. App. 658, 665-66, 606 S.E.2d 389, 395 (2005) (internal citations and quotation marks omitted).

A. Termination of Plaintiff's Employment

[1] N.C. Gen. Stat. § 97-32 was amended by our General Assembly in 2011. *See* 2011 N.C. Sess. Laws 1087, 1096, ch. 287, § 12. However, the prior version applies to the present case because Plaintiff's accident occurred before the effective date of the amended statute. *See id.* at 1101, ch. 287, § 23.

Here, the Commission made a finding that "[P]laintiff's resignation was not voluntary." Based on this finding, the Commission performed a *Seagraves* analysis[2] and concluded that the evidence did not establish "that [P]laintiff's termination was for a reason unrelated to the compensable injury, for which a non-injured employee would have been terminated." After carefully reviewing the record, hearing transcript, and exhibits, we conclude that the Commission's finding that Plaintiff's resignation was involuntary is not supported by the evidence.

While there is a dispute among the parties as to the exact wording of her letter of resignation, Plaintiff testified before the deputy commissioner that she resigned because she was told that her work hours would be changing from first shift to second shift. Plaintiff made clear that she would have continued working on the first shift for Waffle House if given the opportunity but that the afternoon hours of the second shift interfered with her personal obligations to care for her sister and husband, who were in poor health and needed her to drive them to medical appointments.

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[2] In *Seagraves*, our Court held that in cases where an employee is terminated involuntarily,

> the employer must first show that the employee was terminated for misconduct or fault, unrelated to the compensable injury, for which a nondisabled employee would ordinarily have been terminated. If the employer makes such a showing, the employee's misconduct will be deemed to constitute a constructive refusal to perform the work provided and consequent forfeiture of benefits for lost earnings, unless the employee is then able to show that his or her inability to find or hold other employment of any kind, or other employment at a wage comparable to that earned prior to the injury, is due to the work-related disability.

Seagraves, 123 N.C. App. at 234, 472 S.E.2d at 401.

Specifically, Plaintiff testified that she "would not have left the job" had her shift not changed and that "the reason [she] left was the change in shift."

Thus, the evidence before the Commission demonstrates that Plaintiff's employment with Waffle House ended as a result of her resignation and that she was never fired. As we explained in *White*, although a resignation by the employee is often an indication that the employment ended voluntarily, "[i]f an employee resigns his job in the face of an imminent dismissal, then the Commission may reasonably find that the resignation was involuntary . . . ." *White*, 167 N.C. App. at 668, 606 S.E.2d at 397 (emphasis omitted). Here, however, Plaintiff was not confronting imminent dismissal by Waffle House. Instead, she was simply informed that she would be required to work a different shift. Therefore, we are unable to conclude that the circumstances surrounding Plaintiff's resignation show that her decision to end her employment with Waffle House was involuntary for purposes of N.C. Gen. Stat. § 97-32.

Consequently, we hold that the Commission erred in failing to find that Plaintiff voluntarily ended her employment. As such, it likewise erred in performing a *Seagraves* analysis. *See Keeton v. Circle K*, 217 N.C. App. 332, 336, 719 S.E.2d 244, 247 (2011) (explaining that plaintiff "voluntarily ended her employment at Circle K" and that "[t]his voluntariness obviated any consideration by the Full Commission of 'constructive refusal' under *Seagraves*"). Instead, the question of whether Plaintiff is

entitled to disability compensation depends on whether Waffle House met its burden of showing that Plaintiff unjustifiably refused suitable employment. *See id.* ("If the termination is voluntary *and* the employer meets its burden of showing that a plaintiff unjustifiably refused suitable employment, then the employee is not entitled to any further [disability] benefits . . . ." (emphasis added and internal citation and quotations marks omitted)).

B. Refusal of Suitable Employment

It is the employer's burden to show that the plaintiff has refused suitable employment. *Gordon v. City of Durham*, 153 N.C. App. 782, 787, 571 S.E.2d 48, 51 (2002). For purposes of this case,[3] "[s]uitable employment is defined as any job that a claimant is capable of performing considering [her] age, education, physical limitations, vocational skills and experience." *Munns v. Precision Franchising, Inc.*, 196 N.C. App. 315, 317-18, 674 S.E.2d 430, 433 (2009) (citation and quotation marks omitted).

"Once the employer shows, to the satisfaction of the Commission, that the employee was offered suitable work, the burden shifts to the employee to show that [her] refusal was justified." *Lowery v. Duke Univ.*, 167 N.C. App. 714, 718, 609 S.E.2d 780, 783 (2005). It is the Industrial Commission's responsibility to determine

[3] The term "suitable employment" is now statutorily defined in N.C. Gen. Stat. § 97-2. *See* 2011 N.C. Sess. Laws 1087, 1096, ch. 287, § 12. The amended version of the statute was not in effect when Plaintiff's claim arose and therefore does not apply. *See id.* at 1101, ch. 287, § 23.

whether the employee's refusal of employment was justified. *See* N.C. Gen. Stat. § 97-32 (stating that injured employee is not entitled to compensation if she refuses suitable employment "unless in the opinion of the Industrial Commission such refusal was justified"); *Keeton*, 217 N.C. App. at 337, 719 S.E.2d at 248 ("Per section 97-34, it is left to the opinion of the Industrial Commission whether an employee's refusal of suitable employment is justified." (citation and quotation marks omitted)).

The Industrial Commission's Opinion and Award concerning disability compensation was based on its determinations that (1) Plaintiff's employment with Waffle House ended by means of an involuntary termination; and (2) Defendants had not "established that [P]laintiff's termination was for a reason unrelated to the compensable injury, for which a non-injured employee would have been terminated." As explained above, these determinations are not supported by the evidence, and the Commission erred in applying the legal framework applicable to involuntary terminations to Plaintiff's case. As a result, its Opinion and Award does not address the issue of whether Plaintiff's actual refusal of employment through the submission of her voluntary resignation constituted an unjustified refusal of suitable employment.

In its Opinion and Award, the Commission made a finding that Plaintiff received work restrictions from a physician four days before she ended her employment with Waffle House.

> 9. Plaintiff saw Dr. Adel G. Bishal at Emporia Medical Associates on 15 March 2012. On that date, Dr. Bishal wrote a note regarding [P]laintiff's work restrictions, explaining "[Plaintiff] may return to work 3-19-12 on light duty no lifting, mopping or pushing."

However, neither its subsequent findings of fact nor its conclusions of law explain with any specificity the significance that the Commission attached to these work restrictions with regard to the disputed issues of either the suitability of the position offered to Plaintiff or whether her refusal to accept the employment was justified.

As our Court has previously explained, "[t]he plain language of [N.C. Gen. Stat. § 97-32] requires that the proffered employment be suitable to the employee's capacity. If not, it cannot be used to bar compensation for which an employee is otherwise entitled." *Lowery*, 167 N.C. App. at 718, 609 S.E.2d at 783 (citation and quotation marks omitted). Thus, before the Commission may award disability benefits to Plaintiff, it must first determine whether Defendants showed that the position offered to Plaintiff was suitable at the time she refused it. Even if the Commission concludes that the employment was suitable to her capabilities, it may still find that her refusal to perform the employment was justified. However, if the employment is suitable for Plaintiff "considering [her] age, education, physical limitations, vocational skills and experience," *Munns*, 196 N.C. App. at 317, 674 S.E.2d at 433 (citation and quotation marks omitted), and Plaintiff's refusal of said employment was not justified, Plaintiff is not entitled to any disability compensation

during the period of her refusal. *See* N.C. Gen. Stat. § 97-32. Consequently, these preliminary determinations are crucial to the resolution of whether Plaintiff is actually entitled to disability compensation.

When an appellate court reviews an opinion and award, it is well established that

> when the findings are insufficient to determine the rights of the parties, the court may remand to the Industrial Commission for additional findings. In addition, if the findings of the Commission are based on a misapprehension of the law, the case should be remanded so that the evidence may be considered in its true legal light.

Johnson v. S. Tire Sales & Serv., 358 N.C. 701, 705, 599 S.E.2d 508, 512 (2004) (internal citations, quotation marks, brackets, and alterations omitted). Here, the Commission has failed to make the necessary findings to resolve the issue of whether Plaintiff's voluntary resignation constituted an unjustifiable refusal of suitable employment. Accordingly, we must remand to the Commission for further findings and conclusions on these issues. *See Munn*, 196 N.C. App. at 321, 674 S.E.2d at 435 (remanding on issue of suitable employment where Commission failed to make findings "addressing employee's ability to perform the [offered] job considering his age, education, physical limitations, vocational skills and experience" (citation and quotation marks omitted)).

Conclusion

For the reasons stated above, we affirm in part and reverse and remand in part.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).