NO. COA06-958

NORTH CAROLINA COURT OF APPEALS

Filed: 15 May 2007

MARY FRANCES POWE,
Employee,
Plaintiff-Appellant,

v.

North Carolina Industrial Commission
I.C. File No. 150598

CENTERPOINT HUMAN SERVICES,
Employer,

BRENTWOOD SERVICES,
Carrier,
Defendants-Appellees.

Appeal by Plaintiff from opinion and award entered 2 June 2006 by the North Carolina Industrial Commission. Heard in the Court of Appeals 22 February 2007.

Kathleen G. Sumner for Plaintiff-Appellant.

Morris York Williams Surles & Barringer, LLP, by Stephen Kushner, for Defendants-Appellees.

McGEE, Judge.

Mary Frances Powe (Plaintiff) sustained a compensable injury to her lower back and left hip on or about 21 May 2001 while working for Centerpoint Human Services (Centerpoint). Brentwood Services was Centerpoint's workers' compensation insurance carrier at the time of Plaintiff's injury. Centerpoint and Brentwood Services (Defendants) started paying temporary total disability benefits to Plaintiff on 20 June 2001.

Plaintiff began receiving medical treatment from Dr. Richard M. O'Keefe, Jr. (Dr. O'Keefe) on 13 June 2001. However, for the reasons set forth in the analysis portion of this opinion, we need not recount Dr. O'Keefe's testimony.

Plaintiff received an independent medical evaluation from Dr. O. Del Curling, Jr. (Dr. Curling), and Dr. Curling prepared a report on 17 September 2002. Following review of an MRI scan administered to Plaintiff, Dr. Curling filed an addendum to his report on 22 October 2002. Dr. Curling stated that he did not see any apparent explanation for Plaintiff's radicular pain complaints and recommended a functional restoration program. Dr. Curling stated that if Plaintiff did not elect to proceed with such a program, he would consider Plaintiff to be at Maximum Medical Improvement (MMI) with a three percent permanent partial impairment of the back. Dr. Curling further stated he considered Plaintiff to be capable of modified work activities.

Trudy Castlebury (Ms. Castlebury) testified in a deposition that she worked for Brentwood Services and had a master's degree in rehabilitation counseling. Ms. Castlebury also testified she was a certified rehabilitation counselor and a certified disability management specialist. A Form 25N was filed on 3 April 2003, assigning Ms. Castlebury as Plaintiff's rehabilitation professional "[t]o coordinate and monitor the appropriate and necessary rehabilitation services to ensure [Plaintiff's] successful return to work." Ms. Castlebury testified she began providing traditional vocational rehabilitation services to Plaintiff on 5 August 2003. However, she also testified that she had earlier provided transitional medical case management services to Plaintiff beginning on 18 September 2001. Ms. Castlebury's first vocational rehabilitation meeting with Plaintiff occurred at the Employment Security Commission.

Ms. Castlebury testified that she tried to provide vocational rehabilitation services to Plaintiff from August 2003 through December 2003. However, Plaintiff never provided a copy

of her resume to Ms. Castlebury and never told Ms. Castlebury where she had gone to school or what degrees she had obtained. Ms. Castlebury testified that Plaintiff did not provide all the answers to the initial vocational assessment and Ms. Castlebury was unable to devise an individual vocational plan for Plaintiff.

Special Deputy Commissioner Chrystina F. Kesler approved a Form 24 on 15 October 2003 and suspended Plaintiff's benefits effective 22 August 2003. Ms. Castlebury was injured in a motor vehicle accident in January 2004 and Plaintiff's case was transferred to Mary O'Neill (Ms. O'Neill) on 18 February 2004. Ms. O'Neill testified she was a vocational case manager with Southern Rehabilitation Network, and that she had a master's degree in rehabilitation counseling and was a certified rehabilitation counselor. Ms. O'Neill first met with Plaintiff on 18 March 2004, and Plaintiff presented her resume to Ms. O'Neill on 22 April 2004. Ms. O'Neill testified that Plaintiff had included a list of her disabilities on the resume and Ms. O'Neill had advised Plaintiff to remove the listed disabilities. However, Plaintiff thought Ms. O'Neill was instructing Plaintiff to lie on her resume. Ms. O'Neill told Plaintiff she would not be lying because she did not have to present her disabilities to potential employers. Plaintiff provided Ms. O'Neill with an updated resume on 29 April 2004. This resume excluded information about Plaintiff's disabilities.

Deputy Commissioner Chrystal Redding Stanback (the Deputy Commissioner) conducted a hearing on the matter on 21 June 2004 and subsequently received the depositions of Dr. O'Keefe and Ms. Castlebury. The Deputy Commissioner filed an opinion and award on 10 January 2005, in which she made numerous findings of fact, including a finding that

> [p]rior to April 29, 2004, . . . Plaintiff was non-compliant with vocational rehabilitation efforts, and her workers' compensation benefits were rightfully suspended. As of April 29, 2004, Plaintiff has been compliant with vocational rehabilitation and is entitled to

> reinstatement of her temporary total disability compensation and medical treatment, for so long as she remains cooperative and compliant with vocational rehabilitation efforts and for so long as her authorized treating physician approves the same.

The Deputy Commissioner concluded that Plaintiff had "failed to cooperate with medical and vocational rehabilitation services offered by Defendants, despite an Order of the Industrial Commission. Her noncompliance is unjustified. Plaintiff ceased her refusal to cooperate as of April 29, 2004." The Deputy Commissioner therefore affirmed the Special Deputy Commissioner's approval of Defendants' Form 24. However, the Deputy Commissioner ordered Plaintiff's temporary total disability compensation to be reinstated as of 29 April 2004.

Defendants wrote a letter to the Deputy Commissioner dated 19 January 2005 and specifically requested that the Deputy Commissioner "treat this letter as Defendants' Motion for Reconsideration and to admit additional evidence." Defendants requested that the Deputy Commissioner admit into evidence a 25 October 2004 letter from Plaintiff's former counsel to Southern Rehabilitation Network, Inc., stating that Plaintiff would no longer participate in vocational rehabilitation. However, the Deputy Commissioner denied the motion, and Defendants filed a Form 44, alleging error as follows:

> The Deputy Commissioner erred in failing to reopen the record and receive additional evidence, not available to the parties at the time of hearing, indicating that Plaintiff has again ceased compliance with vocational rehabilitation, and as such should be subject to an ongoing suspension of her temporary total disability benefits.

Plaintiff also appealed from the Deputy Commissioner's opinion and award. The Industrial Commission (the Commission) filed an opinion and award on 2 June 2006, affirming, with modifications, the Deputy Commissioner's opinion and award. The Commission allowed Defendants' motion to consider the 25 October 2004 correspondence of Plaintiff's former counsel. Based upon its findings of fact and conclusions of law, the Commission determined that

> [t]he Special Deputy Commissioner's approval of Defendants' Form 24 Application is AFFIRMED. Defendants' Form 24 is APPROVED, and Defendants are entitled to suspend [Plaintiff's] temporary total disability benefits effective August 22, 2003 through April 28, 2004, and from October 25, 2004 and continuing until [P]laintiff shows that she is compliant with vocational rehabilitation.

Plaintiff appeals.

Our review of an opinion and award by the Commission is limited to two inquiries: (1) whether there is any competent evidence in the record to support the Commission's findings of fact; and (2) whether the Commission's conclusions of law are justified by the findings of fact. *Counts v. Black & Decker Corp.*, 121 N.C. App. 387, 389, 465 S.E.2d 343, 345, *disc. review denied*, 343 N.C. 305, 471 S.E.2d 68 (1996). If supported by competent evidence, the Commission's findings are conclusive, even if the evidence might also support contrary findings. *Jones v. Candler Mobile Village*, 118 N.C. App. 719, 721, 457 S.E.2d 315, 317 (1995). We review the Commission's conclusions of law *de novo*. *Johnson v. Herbie's Place*, 157 N.C. App. 168, 171, 579 S.E.2d 110, 113, *disc. review denied*, 357 N.C. 460, 585 S.E.2d 760 (2003).

I.

Plaintiff argues the assignment of Ms. Castlebury as a vocation rehabilitation professional was void *ab initio* and therefore the opinion and award suspending Plaintiff's temporary total disability benefits was also void *ab initio*. Plaintiff argues the assignment of Ms. Castlebury was void *ab initio* for the following reasons:

> (1) [Ms. Castlebury] [was] not registered with the Workers' Compensation Registry of Rehabilitation Professionals; (2) . . . Defendants fail[ed] to file or prepare the Form 25N until April 3, 2003, but [Ms. Castlebury] [had] actively participated in medical case management and vocational rehabilitation since September 18, 2001; (3) . . . [Ms. Castlebury] [was] not qualified for medical case management; [and] (4) . . . [Ms. Castlebury] communicate[d]

> *ex parte* with the medical providers with no Form 25C executed by[Plaintiff].

Plaintiff further argues Ms. Castlebury violated several other rules of the North Carolina Industrial Commission Rules for Utilization of Rehabilitation Professionals (the Rehabilitation Rules) by (1) "not furnishing simultaneous communications with all parties[,]" (2) "fail[ing] to prepare an Individualized Vocational Rehabilitation plan[,]" (3) failing to give Plaintiff a copy of the Rehabilitation Rules, and (4) failing to disclose a conflict of interest.

Plaintiff's arguments lack merit. As authority, Plaintiff cites the Rehabilitation Rules. However, the Rehabilitation Rules do not contain a provision voiding vocational rehabilitation in the event of noncompliance with the Rehabilitation Rules. Rather, the Rehabilitation Rules provide a procedure whereby a party can move for the removal of a rehabilitation professional. Section IX of the Rehabilitation Rules provides:

> An RP may be removed from a case upon motion by either party for good cause shown or by the Industrial Commission in its own discretion. The motion shall be filed with the Executive Secretary's Office and served upon all parties and the RP. Any party or the RP may file a response to the motion within 10 days. The Industrial Commission shall then determine whether to remove the RP from the case.

Moreover, Plaintiff fails to cite any case law mandating that vocational rehabilitation be declared void in the event of noncompliance with the Rehabilitation Rules. Plaintiff does cite, without discussion, *Deskins v. Ithaca Industries, Inc.*, 131 N.C. App. 826, 509 S.E.2d 232 (1998). However, *Deskins* is inapplicable. In *Deskins*, the plaintiff's counsel sent a letter to the plaintiff's vocational rehabilitation case manager instructing the case manager not to contact the plaintiff directly. *Id.* at 829, 509 S.E.2d at 234. The Commission relied on the letter to conclude that suspension of the plaintiff's benefits was appropriate under N.C. Gen. Stat. §97-25. *Id.* at

832, 509 S.E.2d at 235. Our Court cited a provision of N.C. Gen. Stat. §97-25, which is identical to the current version of the statute, and provides:

> "The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service."

Id. at 832, 509 S.E.2d at 235-36 (quoting N.C. Gen. Stat. §97-25 (Cum. Supp. 1997) (emphasis omitted)). Our Court reversed the Commission and held that there was "absolutely no evidence in the record that [the] plaintiff refused any rehabilitative procedure ordered by the Commission. Thus, the Commission erred in concluding that the letter . . . warranted suspension of [the] plaintiff's benefits[.]" *Id.* at 832, 509 S.E.2d at 236.

In the present case, Plaintiff argues that her withdrawal from participation in vocational rehabilitation cannot serve as grounds for suspending her benefits under N.C.G.S. §97-25 because Ms. Castlebury violated the Rehabilitation Rules. This was not the issue in *Deskins* and, therefore, *Deskins* provides no support for this argument.

Plaintiff also argues that the assignment of Ms. Castlebury to Plaintiff's case amounted to the creation of an illegal and, therefore, unenforceable contract. *See Marshall v. Dicks*, 175 N.C. 38, 39, 94 S.E. 514, 514 (1917) (recognizing that "when the parties are *in pari delicto*, [the courts] will not enforce the obligations of an executory contract which is illegal or contrary to public policy or against good morals."). However, this analogy is not persuasive. Again, the Rehabilitation Rules do not contain a provision voiding vocational rehabilitation for violations of

the Rehabilitation Rules. Rather, they provide a procedure whereby a party can seek the removal of a vocational rehabilitation professional.

As part of Plaintiff's argument that vocational rehabilitation was void *ab initio*, Plaintiff relies upon *Salaam v. N.C. Dept. of Transportation*, 122 N.C. App. 83, 468 S.E.2d 536 (1996), *disc. review improvidently allowed*, 345 N.C. 494, 480 S.E.2d 51 (1997), and its progeny, in which our Court held that a doctor's deposition testimony must be excluded where defense counsel engaged in *ex parte* communication with the doctor prior to the deposition. *Id.* at 88, 468 S.E.2d at 539. However, even without Dr. O'Keefe's testimony, which Plaintiff argues was tainted, the Commission's opinion and award was supported. Therefore, this argument lacks merit.

In connection with this argument, Plaintiff also challenges the evidentiary support for finding of fact 19, where the Commission found that "Plaintiff began vocational rehabilitation with Ms. Castlebury on August 5, 2003 at the Employment Security Commission." However, this finding was supported by Ms. Castlebury's testimony that she began providing traditional vocational rehabilitation services to Plaintiff on 5 August 2003. Ms. Castlebury further testified that her first vocational rehabilitation meeting with Plaintiff occurred at the Employment Security Commission. For the reasons stated above, we overrule the assignments of error grouped under this argument.

II.

Plaintiff argues that because no Form 25N was filed assigning Ms. O'Neill as a vocational rehabilitation professional, "Ms. O'Neill was never on the file and thus there is no basis for an Order mandating that [Plaintiff] comply with vocational rehabilitation with Ms.

O'Neill." However, as we have already held, the failure to follow the Rehabilitation Rules does not void vocational rehabilitation. Therefore, we overrule these assignments of error.

III.

Plaintiff next argues that Dr. O'Keefe's testimony was tainted by his *ex parte* communication with Ms. Castlebury, and that Dr. O'Keefe's testimony should have been excluded. Therefore, Plaintiff argues, there was no competent medical testimony that Plaintiff was at MMI or was eligible to participate in vocational rehabilitation.

Plaintiff argues that findings of fact 8, 9, 10, 11, and 12were based upon incompetent testimony that must be excluded pursuant to *Salaam*. It is correct that these findings of fact were based upon the testimony of Dr. O'Keefe. Plaintiff also argues that findings of fact 16 and 17 were not supported by the evidence. Findings 16 and 17 provide:

> 16. Plaintiff asserts that the opinions of Dr. O'Keefe are tainted due to *ex parte* communication. In her brief, [P]laintiff identifies several dates on which she alleges *ex parte* communication occurred. However, [P]laintiff has not offered specific references to occurrences on those dates which would allow the . . . Commission to make a finding, with respect to each date, that *ex parte* communication occurred.
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> 17. Assuming arguendo that *ex parte* communication occurred between Ms. Castlebury and Dr. O'Keefe, there is no evidence to show that possible *ex parte* communication occurred prior to December 3, 2002. On this date, Ms. Castlebury met with Dr. O'Keefe regarding [P]laintiff's condition. Ms. Castlebury testified that [P]laintiff was scheduled to have an appointment on this day, but did not attend. Plaintiff indicates that she was never informed of this appointment. As it appears that *ex parte* communication may have occurred on that date, out of an abundance of caution, the undersigned hereby prophylactically exclude opinions of Dr. O'Keefe after December 3, 2002.

However, we need not determine whether findings 8, 9, 10, 11, 12, 16, and 17 were supported by evidence because even without any of Dr. O'Keefe's testimony, there were sufficient findings of fact to support the Commission's suspension of Plaintiff's benefits.

Plaintiff challenges finding of fact 18, in which the Commission found that "[n]otwithstanding the exclusion of Dr. O'Keefe's opinions after December 3, 2002, [P]laintiff was still capable of participating in vocational rehabilitation pursuant to the opinions of Dr. Curling." Plaintiff argues that "Dr. Curling's medical opinions of September 17, 2002, were in part based upon the tainted medical opinions of Dr. [O'Keefe]." Plaintiff further argues Dr. Curling's opinions were tainted because "Ms. Castlebury was also present at the evaluation and she was not a nurse, nor was she assigned to the case pursuant to a valid Form 25N, nor was she registered with the Industrial Commission Registry."

However, despite Plaintiff's argument as to finding 18, Plaintiff does not challenge findings 13, 14, and 15. These findings state:

> 13. Plaintiff presented to Dr. Curling, her choice for an independent medical examination, on September 17, 2002. Dr. Curling indicated at that time that he was unable to make a determination regarding maximum medical improvement, but further indicated that following a review of the MRI scan, he would be able to make an addendum to the report.
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> 14. On October 22, 2002, Dr. Curling made an addendum to his September 17, 2002 report after reviewing a lumbar MRI. Dr. Curling indicated that there was no apparent explanation for [P]laintiff's radicular complaints. Dr. Curling recommended consideration of a functional restoration program, and noted that he did not feel that a pain clinic referral would be appropriate, and would recommend avoidance of narcotic or other addictive medications. Dr. Curling opined that if [P]laintiff elected not to proceed with the functional restoration program, he had no further recommendations. Plaintiff had already been prescribed a functional restoration program, which she declined.

> 15. Dr. Curling indicated that in the absence of the functional restoration program, he would assign [P]laintiff a 3% disability rating to her back, and would consider her capable of modified work activities. In particular, Dr. Curling would limit [P]laintiff's activities to 15 pound maximum occasional lifting, no prolonged station, frequent changes in position as needed, and no repetitive bending or twisting.

These unchallenged findings demonstrate that Dr. Curling conducted an independent medical examination of Plaintiff and reviewed Plaintiff's MRI scan. Dr. Curling's recommendations were based on his own findings and not on Dr. O'Keefe's opinions. Moreover, Plaintiff has cited no authority in support of her contention that Ms. Castlebury's presence at the independent medical evaluation somehow tainted Dr. Curling's opinions. Plaintiff has also not cited any evidence that Ms. Castlebury was present when Dr. Curling reviewed the MRI and made the 22 October 2002 addendum. Finding 18 was supported by competent evidence. Furthermore, we hold that findings 13, 14, 15, and 18 supported the Commission's conclusions of law and award.

IV.

Plaintiff argues that "Defendants did not file a Motion for Additional Evidence as required by the Act and the Rules in order to tender additional evidence at the hearing before the . . . Commission." Specifically, Plaintiff argues Defendants failed to file a motion to allow the introduction of the 25 October 2004 letter sent by Plaintiff's former counsel to Southern Rehabilitation Network, Inc., which stated that Plaintiff would no longer participate in vocational rehabilitation.

However, despite Plaintiff's contention to the contrary, Defendants did write a letter to the Deputy Commissioner and specifically requested that the Deputy Commissioner "treat this letter as Defendants' Motion for Reconsideration and to admit additional evidence." Defendants requested that the Deputy Commissioner admit into evidence the letter from Plaintiff's counsel

stating that Plaintiff would no longer participate in vocational rehabilitation. However, the Deputy Commissioner denied the motion, and Defendants filed a Form 44, alleging this was error. In its opinion and award, the Commission allowed Defendants' motion to consider the correspondence of Plaintiff's counsel.

Plaintiff cites *Allen v. K-Mart*, 137 N.C. App. 298, 528 S.E.2d 60 (2000), for the proposition that "[w]here the Commission allows a party to introduce new evidence which becomes the basis for its opinion and award, it must allow the other party the opportunity to rebut or discredit that evidence." *Id.* at 304, 528 S.E.2d at 64-65. However, in the present case, Plaintiff does not argue that she was unable to contest the admission of the letter written by her former counsel. Rather, Plaintiff simply argues that Defendants did not file a motion for additional evidence. As we have already determined, Defendants did file such a motion.

Plaintiff also cites *Johnson v. R.R.*, 163 N.C. 431, 79 S.E. 690 (1913), for the showing required on a motion for a new trial. However, as the present case deals with a motion for additional evidence in a workers' compensation case, *Johnson* is inapplicable. We overrule this assignment of error.

V.

Plaintiff next challenges finding of fact 7, which provides:

> In 2001, [P]laintiff saw Dr. [Spillmann], but there was an incident at his office where [P]laintiff reportedly fell and later presented to the emergency room complaining of such a fall. Dr. [Spillmann] emphatically denies that [P]laintiff fell while in his office. According to [P]laintiff, Dr. [Spillmann] "*punched or pushed her*" and required her to do a pull-up on the floor. He allegedly yelled at her when she could not do the pull-up and kept yelling that she had not fallen. Plaintiff's testimony in this regard is not corroborated by any other testimony or written documentation, and is not deemed credible by the undersigned.

Plaintiff's sole argument with respect to this finding is that the Commission erred by deeming Plaintiff's testimony not credible. However, our Supreme Court has recognized:

> This Court in *Adams* made readily apparent two points: (1) the full Commission is the sole judge of the weight and credibility of the evidence, and (2) appellate courts reviewing Commission decisions are limited to reviewing whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law.

Deese v. Champion Int'l Corp., 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000). Because the Commission is the sole judge of the credibility of witnesses, we do not review the Commission's credibility determinations. Dr. Scott J. Spillmann (Dr. Spillmann) prepared a report on 12 December 2001 stating that: "[Plaintiff] . . . stated that she fell and insisted that she fell in the clinic. I corrected her about this[,] [and] stat[ed] that she did not fall." We hold that the challenged finding of fact was supported by competent evidence, and we overrule this assignment of error.

VI.

Plaintiff next assigns error to the Commission's failure to find and conclude that Defendants placed Plaintiff in vocational rehabilitation for the sole purpose of pressuring her into a settlement. As support for her claim that she was pressured into a settlement, Plaintiff cites a letter sent by Sandra Hartis (Ms. Hartis), a senior claims representative with Brentwood Services, who wrote:

> As you are aware, you have an appointment with [Ms.] Castlebury on 3/6/03 at 11:30 a.m. for your initial interview to start vocational [rehabilitation]. It's important that you attend every meeting and comply with [Ms. Castlebury's] request. If you are not interested in job search, I would like to hear from you no later than 3/10/03 to discuss settlement of your claim.

Plaintiff also notes that Ms. Hartis and Ms. Castlebury were both employed by Brentwood Services. However, this evidence does not show that Defendants placed Plaintiff in vocational rehabilitation to pressure her into a settlement. Rather, the findings, based upon the evidence provided by Dr. Curling, established that Plaintiff was capable of returning to work. Therefore, vocational rehabilitation was appropriate. We overrule this assignment of error.

VII.

Plaintiff argues that findings of fact 20 and 21 were not supported by the evidence. Findings of fact 20 and 21 provide:

> 20. Plaintiff denied receiving a letter from Ms. Castlebury dated July 17, 2003. She also denied receiving letters on February 12, 2003, February 27, 2003 and March 4, 2003. Plaintiff stated that the address listed on such correspondence was correct, but the letters were not received.
>
> 21. Plaintiff testified that she does not have an understanding of the vocational rehabilitation process, even though she has postgraduate training in vocational rehabilitation. Plaintiff allegedly asked Ms. Castlebury if she could begin her job search at the ESC on the first day that the two ladies met, but she stated that Ms. Castlebury discouraged her from beginning the job search at that time. Plaintiff claims that she was unaware of Ms. Castlebury's vocational rehabilitation plans throughout their relationship.

Plaintiff argues that finding 20 was not based on any credible evidence because "[D]efendants failed to produce any return receipt cards from the post office which would indicate that such letters allegedly sent certified to [Plaintiff] were in fact received by [Plaintiff]." However, this finding was supported because although Plaintiff denied receiving the letters, she admitted they were correctly addressed to her. *See Wilson v. Claude J. Welch Builders*, 115 N.C. App. 384, 386, 444 S.E.2d 628, 629 (1994) (recognizing that "[e]vidence of the deposit in the mails of a

letter, properly stamped and addressed, establishes prima facie that it was received in the regular course of the mail by the addressee.").

Plaintiff argues finding 21 was "not based on any credible evidence in that [Plaintiff's] testimony was that she had **some** training in vocational rehabilitation with the North Carolina Department of Human Resources, which is not the same as post-graduate training in vocational rehabilitation." (Brief at 34-35). This finding was also supported because Plaintiff testified as follows: "I have postgraduate training in social work, vocational [rehabilitation] through the North Carolina Department of Human Resources." The Commission found that Plaintiff "[had] postgraduate training in vocational rehabilitation." The challenged portion of this finding was supported by competent evidence.

Plaintiff failed to set forth argument pertaining to her remaining assignments of error and, therefore, we deem them abandoned. *See* N.C.R. App. P. 28(b)(6).

Affirmed.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).