IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-647

Filed: 3 May 2016

North Carolina Industrial Commission, I.C. No. 167921

KERRY RAY HARRISON, Employee, Plaintiff,

v.

GEMMA POWER SYSTEMS, LLC, Employer, TRAVELERS INSURANCE COMPANY, Carrier, Defendants.

Appeal by plaintiff from an opinion and award entered 4 March 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 November 2015.

Poisson, Poisson & Bower, PLLC, by E. Stewart Poisson, for plaintiff-appellant.

Orbock, Ruark & Dillard, P.C., by Jessica E. Lyles, for defendant-appellees.

McCULLOUGH, Judge.

Kerry Ray Harrison ("plaintiff") appeals from the Amended Opinion and Award of the Full Commission ordering Gemma Power Systems, LLC ("defendant-employer") and Travelers Insurance Company ("defendant-carrier") (collectively "defendants") to provide plaintiff all medical treatment for his neck condition for the period of 2 March 2001 through 18 May 2009, denying plaintiff's claim for additional

benefits under the Workers' Compensation Act, and denying plaintiff's claim for compensation for permanent partial disability. For the following reasons, we affirm.

I. Background

Plaintiff began working for defendant-employer in 2000 as a pipefitter. In this role, plaintiff was required to perform manual labor that often required him to lift between 40 and 100 pounds, including overhead work.

On 2 March 2001, plaintiff suffered a compensable injury while employed with defendant-employer when he was struck on the top of the head by a falling, 60 pound pipe fixture. Plaintiff was wearing a hard hat, but he was knocked to the ground and lost consciousness. On 5 March 2001, plaintiff explained to defendant-employer that he was experiencing severe neck pain. Defendant-employer sent plaintiff to receive medical treatment at Sandhills Medical Center. Although a CT scan showed no evidence of fracture, plaintiff was referred to Larry Stogner, a chiropractor, at First Choice Medical Group. Medical notes from First Choice Medical Group dated 17 May 2001 and 24 May 2001 document plaintiff's headaches and neck pain, respectively. Plaintiff returned to work with defendant-employer doing light-duty tasks, but was laid off on 22 April 2001.

After being laid off, defendant-employer referred plaintiff to Dr. Dixon W. Gerber, an orthopaedic surgeon, for a second opinion examination. Dr. Gerber examined plaintiff on 27 June 2001 and Dr. Gerber's medical record reflects that

plaintiff suffered a neck injury as a result of the 2 March 2001 incident. Dr. Gerber provided in his record as follows:

> He moves around well. Examination of the cervical spine shows that he basically has a full ROM [(range of motion)] with a normal neurologic examination to his upper extremities. . . . I feel this gentleman sustained an acute cervical injury back on 03-02-01. At the presenttime [sic] I think he is at maximum medical improvement and has no permanent partial disability. I think this patient could return to full unrestricted duties commencing 07-02-01.

On 6 July 2001, plaintiff filed a Form 18, "Notice of Accident to Employer and Claim of Employee, Representative, or Dependent," reflecting the 2 March 2001 workplace injury.

Plaintiff was re-hired by defendant-employer at full-duty as a pipefitter. Shortly thereafter, based on several instances where plaintiff missed work and arrived late, defendant-employer terminated plaintiff. Plaintiff then worked for a number of employers in the construction industry as a pipefitter from July 2001 until February 2003. Subsequently, plaintiff worked at various jobs serving as a security guard, movie theatre employee, electrician's helper, and loader.

On 27 June 2002, plaintiff sought medical treatment on his own from Southeastern Regional Medical Center and underwent an MRI, revealing a "mild broad base disc bulge at C6-7."

At defendants' request, plaintiff underwent an independent medical examination performed by Dr. Robert Lacin at Goldsboro Neurological Surgery. An

11 October 2002 medical record generated by Dr. Lacin reflected his opinion regarding the cause of plaintiff's neck condition:

> In regard to the origin of these complaints, with a temporal relationship to the accident, in absence of any other problems with his neck, I certainly have no doubt that [plaintiff's] symptoms are related to this incident of March 2, 2001.

Dr. Lacin recommended that plaintiff see an interventional pain management specialist to perform diagnostic joint blocks, and, if necessary, a cervical discogram.

Following a motion filed by plaintiff to authorize additional neck treatment, an Order was filed 7 July 2003 by Special Deputy Commissioner Robert Harris, compelling defendants to "provide for plaintiff to undergo the diagnostic testing recommended by Dr. Lacin with a specialist of plaintiff's choice."

Plaintiff was treated in Dr. T. Hemanth Rao's office at Neurology Consultants of the Carolinas from 23 December 2003 until 16 November 2006. A note from his 23 December 2003 visit reflects that plaintiff was experiencing neck pain and headaches. A 28 April 2004 note explains that plaintiff was suffering "[c]ervicogenic headaches secondary to workplace trauma and myofacial [sic] injury." In November 2006, plaintiff was examined by Dr. Paul R. MacDonald who worked with Dr. Rao. A note by Dr. MacDonald from a 16 November 2006 visit demonstrated that plaintiff had recently undergone an MRI and Dr. MacDonald included the following analysis of its results:

> This is an abnormal study. There is electrophysiological evidence of a chronic right C7 radiculopathy. This does correlate with the disc bulge seen at the C6-7 level. [Plaintiff] has already been treated for this conservatively, but has not improved. Therefore, we will go ahead and refer him for a surgical opinion.

On 11 December 2008, plaintiff filed a Form 33 alleging that "[d]efendants have refused to authorize medical treatment as recommended by Dr. Paul MacDonald." This dispute was resolved by a 22 December 2008 order from former Deputy Commissioner Rideout sending plaintiff to be evaluated by Dr. Rao. Because of some confusion within the Neurology Consultants of the Carolinas practice, plaintiff was instead seen by Dr. MacDonald. Dr. MacDonald recommended that plaintiff be referred for an evaluation with Dr. John Welfshofer.

On 27 April 2009, Dr. Alfred Rhyne, board certified in orthopedics, performed an independent medical evaluation of plaintiff and concluded that:

> I think that the prudent thing to do at this point is to consider an MRI scan of his cervical spine, and we will have him follow up with me afterward . . . his diagnoses are chronic C7 radiculopathy and a history of disk protrusion at C6-7.

Later, plaintiff underwent an MRI from the Veterans Affairs Medical Center in Fayetteville, North Carolina. A medical record from that facility dated 9 August 2010 reflects Dr. Dawod A. Dawod's evaluation of the MRI results: "Multilevel cervical spondylosis seen in the lower cervical spine, most prominent at C5 and C6, as described above." Plaintiff requested that defendant-employer pay for Dr. Rhyne to

read the MRI and render an opinion for further treatment but defendant-employer refused this request.

In May 2009, plaintiff stopped working and returned to school, graduating with an associate's degree in May 2012. Plaintiff received unemployment benefits from February 2003 until May 2009.

On 25 January 2012, plaintiff filed another Form 33 request with the Industrial Commission alleging that defendant-employer had failed to authorize plaintiff's request for further treatment with Dr. Rhyne and raised the issue of plaintiff's right to indemnity benefits as a result of the 2 March 2001 injury. On 6 February 2012, defendants filed a Form 33R contending that plaintiff's claim was "medical only" and barred by the statute of limitations. The record demonstrates that plaintiff has never received indemnity benefits from defendant-employer, but did receive payments for authorized medical expenses until 18 May 2009, the date of defendant-employer's last recorded payment.

A hearing before Deputy Commissioner James Gillen was held on 18 July 2012 and an opinion and award was entered 7 February 2013. The opinion and award concluded that plaintiff was entitled to the provision of medical treatment for his neck condition for the period from 2 March 2001 through 18 May 2009 but that plaintiff was not entitled to additional medical compensation under N.C. Gen. Stat. § 97-25.1

because he was barred by the statute of limitations. Furthermore, the Opinion and Award concluded as follows:

> 5. Regarding plaintiff's entitlement to temporary total or temporary partial disability benefits, the burden of proving compensable disability is with plaintiff. Disability is defined by the Act as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment." N.C. Gen. Stat. § 97-2(9). A plaintiff may meet this burden by producing one of the following: (1) medical evidence that he is physically or mentally, as a result of the work-related injury, incapable of work in any employment; (2) evidence that he is capable of some work, but that he has, after a reasonable effort, been unsuccessful in his efforts to obtain employment; (3) evidence that he is capable of some work, but that it would be futile because of preexisting conditions, such as age, inexperience, or lack of education, to seek employment; or (4) evidence that he has obtained other employment at wages less than his pre-injury wages. In the case at bar plaintiff was released to return to work at regular duty as of 2 July 2001. Plaintiff returned to work at regular duty for multiple employers subsequent to that date at uncertain wages and received unemployment benefits when he was not working. Plaintiff did not prove that, as a result of the 2 March 2001 injury, he was rendered disabled as defined by the Act. Therefore, in this case plaintiff failed to meet his burden of proving the existence and extent of disability that was caused by the 2 March 2001 injury. Moreover, plaintiff was released to return to work without restrictions as of 2 July 2001.

(citations omitted). Plaintiff filed notice of appeal to the Full Commission.

Following a hearing held on 17 July 2013, the Full Commission entered an opinion and award on 16 September 2013, affirming the opinion and award of Deputy Commissioner Gillen.

Plaintiff appealed the decision of the Full Commission to the North Carolina Court of Appeals. In a 1 July 2014 unpublished opinion, our Court addressed whether plaintiff's claim for additional medical compensation was time barred by N.C. Gen. Stat. § 97-25.1; whether the Full Commission erred in denying temporary total and temporary partial disability benefits; and whether the Full Commission erred in denying permanent partial impairment benefits. *Harrison v. Gemma Power Systems, LLC*, __ N.C. App. __, 763 S.E.2d 17, 2014 WL 2993853 (July 2014) (unpub.) ("*Harrison I*"). The *Harrison I* Court remanded the question of plaintiff's right to temporary total and temporary partial disability under the second and third prongs stated in *Russell v. Lowes Prod. Distribution*, 108 N.C. App. 762, 425 S.E.2d 454 (1993), to the Full Commission for additional fact finding. The Court in *Harrison I* also vacated finding of fact number 22[1] and remanded for additional findings of fact and conclusions of law on the issue of plaintiff's entitlement to permanent partial impairment benefits under N.C. Gen. Stat. § 97-31. In all other respects, the Opinion and Award of the Full Commission was affirmed. *Id.*

[1] Finding of fact number 22 stated as follows: "Dr. Rhyne testified that plaintiff's probable permanent partial disability would be three percent (3%), or if plaintiff had to have surgery, the rating would be in the range of five to fifteen percent (5-15%). The Commission assigns greater weight to the testimony of Dr. Gerber regarding plaintiff's permanent partial disability rating as Dr. Gerber was plaintiff's authorized treating physician and Dr. Rhyne only performed a one time independent medical evaluation. Therefore, based on Dr. Gerber's testimony, the Commission finds plaintiff has no permanent partial disability."

Following a hearing held on 17 July 2013, the Full Commission filed an Amended Opinion and Award on 4 March 2015. The Full Commission amended its findings of fact and conclusions of law. Nevertheless, the Full Commission concluded that while plaintiff is entitled to the provision of medical treatment for his neck condition for the period from 2 March 2001 through 18 May 2009, plaintiff was not entitled to additional medical compensation pursuant to N.C. Gen. Stat. § 97-25.1. Regarding plaintiff's entitlement to temporary total or temporary partial disability benefits, the Full Commission concluded that because plaintiff had failed to meet his burden of proving disability under any *Russell* prong for any time period after 2 July 2001, he was not entitled to temporary partial or temporary total disability compensation. The Full Commission also concluded that plaintiff was not entitled to any compensation for permanent partial disability pursuant to N.C. Gen. Stat. § 97-31.

Plaintiff appeals.

II. Standard of Review

"Appellate review of an award from the Industrial Commission is generally limited to two issues: (1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492 (2005). "Thus, if the totality of the evidence, viewed in the light most favorable to the complainant, tends directly

or by reasonable inference to support the Commission's findings, these findings are conclusive on appeal even though there may be plenary evidence to support findings to the contrary." *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 166, 265 S.E.2d 389, 390 (1980). "[W]e review *de novo* the conclusions of law of the Commission." *Boney v. Winn Dixie*, *Inc.*, 163 N.C. App. 330, 331, 593 S.E.2d 93, 95 (2004).

III. Discussion

Plaintiff's sole argument on appeal is that the Full Commission erred by concluding that he was not entitled to any compensation for permanent partial disability pursuant to N.C. Gen. Stat. § 97-31. We disagree.

In *Harrison I*, our Court held that:

> "Maximum medical improvement" refers to the point in time when the injury has stabilized and the healing period has ended. When a claimant reaches maximum medical improvement, he or she may receive scheduled benefits pursuant to N.C. Gen. Stat. § 97-31. A "permanent partial disability rating" is a factual determination by a medical professional indicating the degree to which the scheduled body part has been permanently impaired for purposes of determining compensation under N.C. Gen. Stat. § 97-31. Thus, a finding that Plaintiff is at maximum medical improvement with no permanent partial disability denotes that Plaintiff's compensable injury has healed and/or stabilized, with no permanent functional loss to his neck and/or back. The fact that Plaintiff has no *permanent* functional impairment, however, does not mean, *ipso facto*, that ongoing medical treatment will not be necessary to "effect a cure and give relief" to the underlying injury.

Harrison I, __ N.C. App. __, __, 763 S.E.2d 17, __, 2014 WL 2993853 (internal citations omitted). Our Court held that if the Full Commission again found that plaintiff had no permanent partial impairment, "the Full Commission is instructed to enter additional findings reconciling that finding with Finding of Fact 25." [2]

Plaintiff directs our attention to finding of fact 29, which was added to the amended opinion and award by the Full Commission pursuant to our holding in *Harrison I*. Finding of fact 29 provides that:

> 29. Based upon the preponderance of the evidence in view of the entire record, the Commission finds that subsequent to plaintiff's release to work without restrictions on 2 July 2001, plaintiff returned to his pre-injury job at his pre-injury wages and therefore plaintiff has failed to demonstrate that as a result of his compensable injury he was incapable of earning wages in the same employment. Thereafter, on 30 January 2009, plaintiff was assigned work restrictions of no lifting greater than twenty (20) pounds and no reaching overhead. Those restrictions rendered plaintiff's pre-injury job unsuitable as it would exceed both the lifting restriction and the prohibition on reaching overhead.

Plaintiff argues that finding of fact 29 constitutes "a finding of fact recognizing a loss of functional ability due to injury," amounting to a " 'functional abnormality' after maximum medical improvement because he can no longer perform his pre-injury job

[2] Finding of Fact 25 stated that "Based upon the preponderance of the evidence in view of the entire record, the medical treatment plaintiff received for his neck condition, on or before 18 May 2009, was reasonable and medically necessary, and was reasonably calculated to effect a cure and give relief from plaintiff's 2 March 2001 compensable injury by accident."

due to accident-related restrictions." As such, plaintiff contends that finding of fact 29 establishes that plaintiff has permanent partial impairment due to his injury.

Plaintiff further maintains that finding of fact number 29 is irreconcilable with the Full Commission's finding of fact 23 and conclusion of law 6. Finding of fact 23 and conclusion of law 6 provide as follows:

> 23. Dr. Rhyne testified that plaintiff's probable permanent partial disability would be three percent (3%), or if plaintiff had to have surgery, the rating would be in the range of five to fifteen percent (5-15%). The Commission assigns greater weight to the opinion of Dr. Gerber regarding plaintiff's permanent partial disability rating as detailed in Dr. Gerber's 27 June 2001 medical record. The Commission bases the decision to assign more weight to Dr. Gerber's opinion regarding the permanent partial disability rating on the fact that Dr. Gerber was able to examine plaintiff in close temporal proximity to plaintiff's compensable injury and also provided his opinion on plaintiff's permanent partial disability at the time of his examination. Dr. Gerber's record noted plaintiff's statement to him that plaintiff felt he could probably return to work, and found plaintiff to be at maximum medical improvement with no permanent disability and to have no work restrictions. Dr. Gerber's examination was on 27 June 2001, less than four months after plaintiff's injury, as compared to Dr. Rhyne, who did not examine plaintiff until 27 April 2009, more than eight years after plaintiff's injury and gave his opinion on plaintiff's permanent partial disability rating more than three years after his examination of plaintiff in October of 2012. Therefore, based on Dr. Gerber's 27 June 2001 medical record, the Commission finds that plaintiff reached maximum medical improvement on 27 June 2001 and that plaintiff has no permanent partial disability.
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> . . . .

> 6. Based upon Dr. Gerber's assignment of zero percent (0%) permanent partial disability rating, plaintiff is not entitled to any compensation for permanent partial disability.

At the outset, we note that plaintiff has failed to cite to any controlling legal authority for his contention that it is irreconcilable for the Full Commission to conclude that plaintiff has reached maximum medical improvement and has a loss of functional ability but to find no permanent partial impairment. *See* N.C. R. App. P. 28(b)(6) (2016) ("The body of the argument . . . shall contain citations of the authorities upon which the appellant relies.").

Nevertheless, we do not find plaintiff's arguments convincing. The success of plaintiff's argument rests on the presumption that the 30 January 2009 work restrictions, of lifting no greater than 20 pounds and no reaching overhead, were imposed *as a result* of the 2 March 2001 injury. However, finding of fact 29 merely states that on 30 January 2009, "plaintiff was assigned work restrictions" but does not indicate whether these work restrictions were caused by the 2 March 2001 injury which occurred approximately eight years prior. Based on our review, there is competent record evidence to support the finding that these work instructions were in fact imposed by Dr. MacDonald on 30 January 2009, but the evidence does not indicate whether these restrictions were related to his 2 March 2001 injury in any way.

Furthermore, plaintiff does not challenge the sufficiency of any of the Full Commission's findings of fact, and so they are binding on appeal. *Medlin v. Weaver Cooke Constr., LLC,* 367 N.C. 414, 423, 760 S.E.2d 732, 738 (2014). In the amended opinion and award, the Full Commission entered a finding that Dr. Dixon W. Gerber, an orthopedic surgeon, performed an examination of plaintiff on 27 June 2001:

> 5. . . . Dr. Gerber's medical record from 27 June 2001 reflects that plaintiff suffered a neck injury as a result of the 2 March 2001 work injury. In that record, Dr. Gerber reflects plaintiff's impression that "[plaintiff] basically feels that he could probably return to work at any time." Dr. Gerber found that plaintiff was at maximum medical improvement and *had no permanent partial disability*. Dr. Gerber released plaintiff from treatment without restrictions as of 2 July 2001.

(emphasis added). In its finding of fact 23, the Full Commission assigned greater weight to the opinion of Dr. Gerber regarding plaintiff's permanent partial disability, as opposed to the opinion of Dr. Rhyne because Dr. Gerber had an opportunity to examine plaintiff in close temporal proximity to the 2 March 2001 injury and was able to render his opinion on plaintiff's permanent partial disability rating at the time of his examination. In contrast, Dr. Rhyne was not able to examine plaintiff until 27 April 2009, more than eight years after the 2 March 2001 injury took place and rendered his opinion as to plaintiff's permanent partial disability rating more than three years after his examination of plaintiff. The Full Commission concluded that

based upon Dr. Gerber's assignment of a 0% permanent partial disability rating, plaintiff was not entitled to any compensation for permanent partial disability.

"The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony. Thus, on appeal, appellate courts do not have the right to weigh the evidence and decide the issue on the basis of its weight." *Gore v. Myrtle/Mueller*, 362 N.C. 27, 40-41, 653 S.E.2d 400, 409 (2007) (citations and quotation marks omitted). Applying this well-established principle to the case before us, we hold that the Full Commission was entitled to place greater weight on the substance of Dr. Gerber's opinion. Accordingly, we hold that the Full Commission did not err by concluding that plaintiff was not entitled to any compensation for permanent partial disability.

IV. Conclusion

The Full Commission did not err in its conclusion that plaintiff is not entitled to any compensation for permanent partial disability pursuant to N.C. Gen. Stat. § 97-31. The 6 August 2014 amended opinion and award is affirmed.

AFFIRMED.

Judge BRYANT concurs in the result.

Judge GEER dissents in a separate opinion.

Report per Rule 30(e).

GEER, Judge, dissenting.

I believe that the Full Commission has, on remand, again failed to properly determine whether plaintiff is entitled to compensation under N.C. Gen. Stat. § 97-31 (2015). I must, therefore, respectfully dissent.

This Court's prior opinion explained: "When a claimant reaches maximum medical improvement, he or she may receive scheduled benefits pursuant to N.C. Gen. Stat. § 97-31. A 'permanent partial disability rating' is a factual determination by a medical professional indicating *the degree to which the scheduled body part has been permanently impaired* for purposes of determining compensation under N.C. Gen. Stat. § 97-31." *Harrison v. Gemma Power Sys., LLC*, ___ N.C. App. ___, 763 S.E.2d 17, 2014 WL 2993853, at *10, 2014 N.C. App. LEXIS 701, at *27 (2014) (unpublished) (emphasis added) (internal citations omitted). Under this Court's prior opinion, in order to conclude that plaintiff in this case had no permanent partial disability, the Commission had to find that plaintiff's compensable injury "healed and/or stabilized, *with no permanent functional loss* to his neck and/or back." *Id.* (emphasis added). In other words, if plaintiff sustained loss of function to his neck or back, then he was entitled to benefits under N.C. Gen. Stat. § 97-31.[3] *See Collins v. Speedway Motor Sports Corp.*, 165 N.C. App. 113, 119, 598 S.E.2d 185, 190 (2004) (describing permanent partial disability under N.C. Gen. Stat. § 97-31 as when

[3]Although the majority opinion and defendants assert that plaintiff has cited no authority in support of his argument, this Court's prior opinion sets out the controlling principles.

injured employee "suffers some degree of permanent function loss to a part of the body as enumerated in the statute").

In Finding of Fact No. 29, the Commission found that even though plaintiff initially was able to return to work without restrictions, "[t]hereafter, on 30 January 2009, plaintiff was assigned work restrictions of no lifting greater than twenty (20) pounds and no reaching overhead." The Commission further found that these restrictions rendered his pre-injury job unsuitable because these physical limitations would have prevented him from being able to perform all of his duties. In short, as of 30 January 2009, plaintiff had a loss of function -- a substantial limitation on his ability to lift a relatively modest weight and an inability to reach overhead.

The majority attempts to reconcile this finding with the Commission's ultimate conclusion that plaintiff has suffered no permanent partial disability under N.C. Gen. Stat. § 97-31 by asserting that the record contains no evidence that the 30 January 2009 restrictions were due to the 2 March 2001 compensable neck injury. I do not agree. As reflected in other findings made by the Commission, those restrictions were imposed by Dr. Paul R. MacDonald. Also as reflected in the Commission's findings, plaintiff was seen by Dr. MacDonald on 30 January 2009 solely for his compensable neck condition. The Commission indeed found unambiguously that "plaintiff's neck condition was caused, accelerated, or aggravated by the 2 March 2001 compensable injury by accident."

When the Commission's opinion and award is read as a whole, I believe that it is apparent that the Commission understood that the restrictions Dr. MacDonald assigned were due to plaintiff's compensable neck condition. To the extent that the opinion and award is ambiguous on this point, we should remand to the Commission to clarify its findings. We should not, on appeal, assume that the restrictions are unrelated to the compensable neck condition when the Commission has not specifically said so, and the evidence is not consistent with that assumption.

Even apart from the restrictions, the Commission also found physical damage to plaintiff's cervical spine. A 27 June 2002 MRI "revealed a 'mild broad base disc bulge at C6-7.' " Subsequently, with respect to a 2006 MRI, the Commission found: "Evaluating the results, Dr. MacDonald explained[,] 'This is an abnormal study. There is electrophysiological evidence of a chronic right C7 radiculopathy. This does correlate with the disc bulge seen at the C6-7 level. [Plaintiff] has already been treated for this conservatively, but has not improved.' "

The Commission based its conclusion that plaintiff suffered no partial permanent disability under N.C. Gen. Stat. § 97-31 solely on the opinion of Dr. Dixon W. Gerber, who saw plaintiff for a second opinion examination on 27 June 2001. Dr. Gerber found that, at that time, plaintiff had no permanent partial disability and released plaintiff from treatment without restrictions as of 2 July 2001. The Commission's reliance on this opinion cannot be reconciled with its findings regarding

the 2002 and 2006 MRIs and the 2009 restrictions -- all reflecting physical impairment and loss of function attributable to the compensable neck condition that arose subsequent to Dr. Gerber's 2001 opinion.

I agree with plaintiff, therefore, that the Commission's findings of fact do not support its conclusion that plaintiff suffers no permanent partial disability within the meaning of N.C. Gen. Stat. § 97-31. I would, therefore, reverse the Commission's opinion and award on this issue. To the extent that the opinion and award is unclear regarding the source of the physical restrictions, I would remand so that the Commission can clarify its findings.