Murchison
Burns
Riggsbee

NO. COA99-7

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2000

RITA MONTFORD,
Employee/Plaintiff,

v.

N.C. Industrial Commission
I.C. File No. 205915

CARTERET COUNTY SCHOOLS,
Employer,

SELF-INSURED
(EDUCATOR BENEFIT SERVICES),
Defendant.

Appeal by plaintiff from Opinion and Award of the North Carolina Industrial Commission filed 13 July 1998. Heard in the Court of Appeals 15 November 1999.

Rice, Bryant and Mack, P.A., by Ralph T. Bryant, Jr., for plaintiff-appellant.

Hedrick, Eatman, Gardner and Kincheloe, L.L.P., by Jeffrey A. Doyle, for defendant-appellees.

JOHN, Judge.

Plaintiff Rita Montford appeals an Opinion and Award of the North Carolina Industrial Commission (the Commission) denying her claim for additional workers' compensation benefits based upon a change in condition of her original injury. We affirm the Commission.

Pertinent facts and procedural history include the following: On 3 December 1991, plaintiff sustained "multiple injuries" in the

course of her employment as a teacher's aide with defendant-employer Carteret County Schools (Carteret Schools), an entity self-insured through defendant-carrier North Carolina School Boards Association (jointly, defendants). On 9 January 1992, plaintiff presented to Dr. Irl J. Wentz (Dr. Wentz), an orthopedic physician, complaining of "lower back pain radiating into her legs and arms." Dr. Wentz diagnosed plaintiff with "acute lumbar strain," prescribed physical therapy, and placed her on light-duty work restrictions, including no bending, stooping, long standing or lifting of more than ten pounds. Pursuant to a Form 21 Agreement approved by the Commission 21 July 1992, defendants acknowledged plaintiff's injuries as compensable.

In January 1993, plaintiff returned to work with Carteret Schools. She was placed in a librarian's assistant position and was excused from bus driving duty in accommodation of her work restrictions. On 18 June 1993, Dr. Wentz assigned plaintiff a rating of seven and one half percent (7½%) permanent partial disability of the back. Pursuant to a Form 21 Agreement approved by the Commission 21 July 1992, defendants agreed to pay plaintiff disability compensation for "necessary weeks" beginning 17 January 1992 at the rate of $145.76 per week. A Form 26 supplemental agreement identified the length of disability compensation as twenty-two and one-half weeks. A Form 28B report filed with the Commission indicated the last compensation payment was forwarded 31

August 1993.

On 11 January 1995, plaintiff left work claiming of pain in her back and arms. A 9 February 1995 appointment was arranged for plaintiff to meet with Dr. Christopher Delaney (Dr. Delaney), a physiatry specialist in musculoskeletal and neurologic disabilities and pain. Following his examination of plaintiff, Dr. Delaney rendered a diagnosis of chronic pain syndrome, noting "there [wa]s no organic evidence explaining the patient's complaints." Dr. Delaney "recommended" plaintiff "return to work as there [wa]s no evidence of organic pathology which contraindicates" such return, and he continued her light duty work restrictions.

Plaintiff returned to work 15 February 1995. The next day she again complained of back pain and was driven to Dr. Wentz's office. Dr. Wentz testified that plaintiff's complaints on 16 February 1995 were "essentially the same" as previously, and that his prior diagnosis and disability rating did not change as a result of the visit on that date. Dr. Wentz advised Gordon Patrick (Patrick), plaintiff's principal, that plaintiff "need[ed] to be out of work 30 days after recent change of condition on 2-16-95." Upon a 10 March 1995 examination, Dr. Wentz noted plaintiff's condition had "improved" and that he wanted "to see her try light work beginning April 3rd."

Plaintiff reported for work 4 April 1995, but left soon thereafter complaining of back pain. Plaintiff presented to Dr.

Wentz's office and he encouraged her to return to light duty work by 24 April 1995. However, upon doing so, plaintiff was unable to work a full day without returning home due to back pain. Plaintiff's last reported date of work was on or about 3 May 1995.

On 15 May 1995, Dr. Wentz wrote Patrick stating plaintiff "need[ed] to be out for indefinite period[,] one year?" In his deposition, Dr. Wentz explained this communication was based upon the circumstance that plaintiff "was getting ready to be approved" for disability, and that absent such approval he would have considered her capable of working a "light position with the school."

Plaintiff had applied for short-term state disability benefits (state benefits) 18 March 1995, and learned in May 1995 that she had been approved. Plaintiff received state benefits retroactive from 18 March 1995 until 18 March 1996 and did not seek employment during that time. Thereafter, plaintiff sought approval for permanent state benefits and was continuing to seek such approval as of the date of hearing.

In August 1996, following cessation of state benefits, plaintiff inquired concerning availability of employment at Carteret Schools, but was advised there presently were no positions within the restrictions indicated by Dr. Wentz. Plaintiff did not seek other employment opportunities.

Plaintiff filed a Form 18 Notice of Accident on 24 March 1995,

alleging a change of condition had occurred as of 16 February 1995. Following a 25 September 1996 hearing, the Deputy Commissioner filed an 18 June 1997 Opinion and Award denying plaintiff's claim for additional benefits. The Deputy Commissioner concluded therein that:

> 1. . . . plaintiff has failed to meet her burden of proving a change of condition. While there have been periods of time subsequent to the approval of the Form 26 Supplemental Agreement for Compensation [approved on 9 August 1993,] and the filing of the Form 28B during which plaintiff has not worked, plaintiff has not proven that such periods of unemployment were the result of a change in condition affecting her physical capacity to earn wages. G.S. § 97-47.

Plaintiff thereupon appealed to the Full Commission, which filed an Opinion and Award on 13 July 1998 affirming the decision of the Deputy Commissioner with minor modifications to certain findings of fact. Plaintiff filed timely notice of appeal to this Court.

Appellate review of an award entered by the Commission is limited to a determination of whether

> (1) the Commission's findings of fact are supported by competent evidence, and (2) the Commission's conclusions of law are justified by its findings of fact.

Saums v. Raleigh Community Hospital, 346 N.C. 760, 765, 487 S.E.2d 746, 750-51 (1997). The Commission's findings of fact are "conclusive on appeal if supported by competent evidence," *Hoyle v. Carolina Associated Mills*, 122 N.C. App. 462, 463, 470 S.E.2d 357,

358 (1996), even when evidence has been presented which might support contrary findings of fact, *Matthews v. Petroleum Tank Services, Inc.*, 108 N.C. App. 259, 264, 423 S.E.2d 532, 535 (1992). Although the Commission's factual findings may be set aside "[o]nly where there is a complete lack of competent evidence" in support thereof, *Click v. Freight Carriers*, 300 N.C. 164, 166, 265 S.E.2d 389, 390 (1980), its conclusions of law are fully reviewable on appeal, *Peeler v. Piedmont Elastic, Inc.*, 132 N.C. App. 713, 716, 514 S.E.2d 108, 111 (1999). Finally, the Commission is the "sole judge of the credibility of the witnesses and of the weight to be given to their testimony." *Anderson v. Motor Co.*, 233 N.C. 372, 376, 64 S.E.2d 265, 268 (1951).

N.C.G.S. § 97-47 (1999) provides that

> [u]pon its own motion or upon the application of any party in interest on the grounds of a change in condition, the Industrial Commission may review any award, and on such review may make an award ending, diminishing, or increasing the compensation previously awarded.

G.S. § 97-47.

A change of condition for purposes of section 97-47 is "a substantial change, after final award of compensation," *McLean v. Roadway Express, Inc.*, 307 N.C. 99, 103-04, 296 S.E.2d 456, 459 (1982)(citation omitted), and "refers to conditions different from those existent when the award was made," *id.* The critical factor is whether there has been "a change in condition *affecting the*

employee's physical capacity to earn wages." Lucas v. Bunn Manuf. Co., 90 N.C. App. 401, 404, 368 S.E.2d 386, 388 (1988)(emphasis added). The party seeking modification of an award based upon a change of condition bears the burden of proving that a new condition exists and that it is causally related to the injury upon which the award is based. *Blair v. American Television & Communications Corp.*, 124 N.C. App. 420, 423, 477 S.E.2d 190, 192 (1996). Whether the facts found by the Commission amount to a change of condition is a "question of law" subject to *de novo* review. *Lewis v. Craven Regional Medical Center*, 122 N.C. App. 143, 149, 468 S.E.2d 269, 274 (1996). Bearing these principles in mind, we proceed to a consideration of plaintiff's arguments.

Plaintiff first contends the Commission's findings of fact numbers six, seven, eight, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty and twenty-one were not supported by competent evidence. We do not agree.

Initially, we note plaintiff has failed to present argument or authority pertaining to finding number nineteen, and her assignment of error relating thereto is deemed abandoned. *See* N.C.R. App. P. 28(a)("[q]uestions raised by assignments of error . . . but not then presented and discussed in a party's brief, are deemed abandoned").

In finding number six, the Commission stated:

> 6. Although it is not clear from the testimony precisely when plaintiff returned to

> her full time duties and was able to perform the duties of the position, she did miss numerous days from work due to complaints of pain.

Evidence presented during the 25 September 1996 hearing tended to show plaintiff returned to work in January 1993 as a librarian's assistant under the following restrictions: no bending, stooping, working long intervals while standing, bus driving, or lifting over ten pounds. Although plaintiff asserts in her appellate brief that she

> was able to perform her duties as a media assistant through the 1993 calendar year . . . [and] [d]espite the fact the pain got worse, she was able to perform her full duties . . . until January 1995,

Dr. Wentz's medical records reveal plaintiff made several unsuccessful attempts to perform such duties during that time period: (1) 25 January 1993: plaintiff "miss[ed] part of day sometimes at work;" (2) 25 February 1993: plaintiff "miss[ed] a whole day's work from time to time;" (3) 30 March 1993: plaintiff "missed work 3-24, 3-25, 3-26-93 and half day on 3-29-93;" (4) 2 April 1993: plaintiff "le[ft] work early yesterday and today;" (5) 27 April 1993: plaintiff "has not been able to work since 4-02-93;" (6) 10 May 1993: plaintiff "returned to 4hr/day work after her 4-27-93 visit."

The documentary evidence contradicts plaintiff's assertions to this Court that she "was able to perform her duties . . . through the 1993 calendar year . . . [and] until January 1995," and in

addition supports the Commission's finding that plaintiff missed numerous days of work due to pain and that the evidence was unclear as to the time of her full return to work. Moreover, notwithstanding Dr. Wentz's 8 September 1994 report that plaintiff had "[r]eturned to same type of work as librarian's assistant," review of the record indeed reveals no clear indication of the date plaintiff in actuality returned or of her ability to perform the duties of her position fully.

Plaintiff also challenges findings number seven and eight which provided as follows:

> 7. Plaintiff presented to psychiatrist [sic] [Dr. Delaney] on 9 February 1995 . . . [who] examined plaintiff extensively and found no neurologic or physiological reasons for plaintiff's pain. Moreover, Dr. Delaney noted "break away behavior" . . . [which] is a volitional release or relaxation of muscles, a release of tension or muscular pressure, accomplished by virtue of a decision made by the person, executing muscular pressure, rather than nonvolitional or uncontrollable release. Straight leg raising tests were normal, indicating no nerve root compression. There were no structural or anatomic abnormalities. Finally, plaintiff had variation in dermatomal patterns. A dermatomal pattern is a map of the areas of sensation associated with a given nerve root level. It is a biological anatomic description of the human anatomy. Injury to a given nerve root will usually cause loss of sensation in a predictable pattern and testing in these dermatomes can be useful for identifying the level of injury, or specific nerve root which is involved. There was no consistent evidence of a single injury as plaintiff varied her reports during the course of the testing.

> 8. The only diagnosis Dr. Delaney made was of chronic pain syndrome . . . . defined as: "pain of unclear or of etiology not proportionate to the patient's complaint which has failed traditional treatments, and the treatment program . . . usually involves an interdisciplinary approach looking at biological, pharmacologic and psychological interventions which might be useful to restore function."

Plaintiff's assertion of lack of supporting evidence to the contrary, Dr. Delaney's deposition and medical records contain competent support for the foregoing findings. In his 9 February 1995 report, Dr. Delaney noted plaintiff exhibited "break away behavior when testing the left lower extremity." At his deposition, he observed that such behavior is "usually not associated with neurologically induced weakness" and that he felt plaintiff was "self-limiting with the test." Dr. Delaney further noted plaintiff "describe[d] a loss of sensation in various dermatomes on the right upper and left lower extremity, but the dermatomal pattern varie[d] from test to test." He explained that this indicated she "was varying her reports during the course of testing [leading him to conclude] that there was no consistent evidence of a single injury." Finally, Dr. Delaney related that his diagnosis of chronic pain syndrome was based upon his finding of "no structural or anatomic abnormality" and because he had "no idea of what a possible organic cause for the complaints could be."

Although plaintiff insists evidence in the record would support additional or contrary findings, the Commission's findings

are sufficient to determine the rights of the parties, *cf. Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 684 (1982)(where findings are insufficient to determine rights of the parties, court may remand to Commission for additional findings), and are supported by competent evidence and thus conclusive on appeal, notwithstanding evidence that might support contrary findings, *see Matthews*, 108 N.C. App. at 264, 423 S.E.2d at 535 (findings supported by competent evidence are binding on appeal even when evidence exists which might support contrary findings).

Competent evidence also sustains finding number thirteen which stated:

> 13. Plaintiff has not been consistent in her description of the incident on 16 February 1995 which she alleges effected a substantial change in her physical condition and her ability to earn wages. Plaintiff was unable to identify to Dr. Delaney any single event or conditions which related to her increased back pain. Plaintiff complained to Dr. Wentz that her legs fell out from under her.

The record reflects that plaintiff presented to Dr. Wentz on 16 February 1995, whereupon he noted her return was "for a follow up in change of condition when her left knee [and leg] had given way while walking." Plaintiff presented to Dr. Delaney 13 March 1995, who noted she "had returned to work, but while there says her legs got weak and gave out from under her and she had a fall" and that she related "her symptoms are no better and not worse."

However, at the hearing plaintiff testified she was bending

"up and down" to return books to a shelf at work and when she "went to go straighten up, [she] couldn't straighten up . . . [and] was left bent over." Plaintiff's varied and, in some respects, contradictory versions of the 16 February 1995 incident support the Commission's determination that she had been less than consistent in her description of what occurred on that date.

Plaintiff further contends findings of fact fourteen, fifteen and sixteen are "erroneous because they do not address the issue of the extent to which the pain has affected her ability to earn wages beginning January 1995."

The findings at issue read as follows:

> 14. On 16 February 1995, plaintiff was seen by orthopedist [Dr. Wentz]. Plaintiff reported her left knee had given way while she was walking. Initially, Dr. Wentz wrote that plaintiff had "sustained a changed condition." However, plaintiff did not report any different symptoms . . . [or] objective physical changes from those [reported or] exhibited previously. Moreover, Dr. Wentz's diagnoses did not change from what they had been previously and [he] did not assign any additional permanent impairment rating to plaintiff's back on or subsequent to 16 February 1995. Plaintiff continued to have the same light duty restrictions previously issued by Dr. Wentz.
>
> 15. On 15 May 1995, Dr. Wentz wrote a note taking plaintiff out of work for an indefinite period of time. He wrote, "one year?" Dr. Wentz wrote this note based on the fact that plaintiff was getting ready to be approved for State funded short term disability benefits. If plaintiff had not been on the verge of being approved . . . Dr. Wentz would have considered it appropriate for plaintiff to

> continue in a light duty position with defendant-employer. Dr. Wentz did not change plaintiff's restrictions.
>
> 16. Plaintiff has continued to treat with Dr. Wentz subsequent to 15 May 1995. As of 14 July 1995, plaintiff's back and neck condition remained the same. Plaintiff has continued to present to Dr. Wentz with ongoing complaints about both upper and lower back pain (27 February and 23 April 199[6]). However, as of 7 October 1996 plaintiff's back status has remained unchanged.

Review of the record reveals these findings likewise are supported by competent evidence, are sufficient to determine the rights of the parties, *see Hilliard*, 305 N.C. at 595, 290 S.E.2d at 684, and are thus binding on appeal despite evidence which might support contrary findings, *Moore v. Davis Auto Service*, 118 N.C. App. 624, 627, 456 S.E.2d 847, 850 (1995); *see Foster v. Carolina Marble and Tile Co., Inc.*, 132 N.C. App. 505, 507, 513 S.E.2d 75, 77 (appellate "standard of review does not afford this Court the ability to judge the weight that the Commission has chosen to assign certain evidence"), *disc. review denied*, 350 N.C. 830, __ S.E.2d __ (1999).

Plaintiff next attacks finding seventeen, which provides:

> 17. From 18 March 1995 until 18 March 1996, plaintiff received short term disability . . . [and] applied for State funded long term disability benefits. Plaintiff did not look for other work [during that time] . . . despite her physical capacity for employment within the restrictions outlined by Dr. Wentz. The Deputy Commissioner observed at the hearing that, despite plaintiff's continuing and variety of complaints, that she sat erect,

> unmoving and unswerving during over eighty minutes of testimony. . . . The Deputy Commissioner did not find plaintiff's complaints of pain to be credible. The Full Commission declines to overrule the credibility determination by the Deputy Commissioner.

As noted above, the Commission, acting as the fact finder, is the "sole judge of the credibility of the witnesses and the weight to be given to their testimony," *Hilliard*, 305 N.C. at 595, 290 S.E.2d at 683-84, and may accept or reject the testimony of a witness solely on the basis of whether it believes the witness, *Anderson*, 233 N.C. at 276, 64 S.E.2d at 268. Moreover, the Commission's credibility determinations may not be disturbed on appeal. *Abels v. Renfro Corp.*, 100 N.C. App. 186, 188, 394 S.E.2d 658, 659 (1990)(Commission, as "trier of the facts," determines the weight and credibility of the evidence, and findings related thereto are "within the Commission's province and cannot be disturbed [on appeal]"). Accordingly, we decline to upset the Commission's assessment of plaintiff's credibility.

Regarding finding number twenty, plaintiff points to evidence she claims indicates her inability to work within Dr. Wentz's restrictions. The Commission found as follows:

> 20. Although plaintiff has continued to be able to work within [her work] restrictions . . . she has not looked for work since August of 1996.

Again, this finding is supported by the record, including medical evidence and plaintiff's own testimony.

On 6 August 1996, Dr. Wentz reported that plaintiff should avoid the following:

> (1) Repetitive lifting or carrying more than five pounds; (2) Repetitive bending and stooping; (3) Repetitive pushing or pulling; (4) Repetitive reaching above shoulder level; (5) Climbing, repetitive squatting or crouching position; (6) Inability to drive a school bus; (7) Standing in place more than 30 minutes; (8) Walking more than 30 minutes . . . [and] avoid environmental exposure to damp cold areas with dust and chemicals.

Based upon this report, John Welmers, Assistant Superintendent of Carteret Schools, initiated correspondence dated 19 August 1996 to the County Board of Education relating that Carteret Schools was unable to provide plaintiff work within the stated restrictions. Upon learning Carteret Schools had no suitable positions available, plaintiff failed to seek other employment opportunities within her work restrictions, notwithstanding her testimony that she was willing to return to work and attempt to perform.

Finally, plaintiff argues finding number twenty-one is erroneous because the Commission "should have found" plaintiff was placed on light duty due to worsening pain. Finding twenty-one provided:

> 21. Subsequent to approval of the Form 26 Supplemental Agreement for Compensation [on 9 August 1993] . . . plaintiff has had no physical or symptomatic changes affecting her physical capacity to earn wages. Neither plaintiff's physical condition or the nature of her complaints have changed since 16 February 1995.

Once again, review of the record reveals no additional findings are necessary to determine rights of the parties, *see Hilliard*, 305 N.C. at 595, 290 S.E.2d at 684, and that competent medical evidence supports the disputed finding.

Following the 16 February 1995 incident, plaintiff was released to work under light-duty restrictions on 3 April 1995. Thereafter, Dr. Wentz examined plaintiff on 14 July 1995, 27 February 1996, 23 April 1996 and 7 October 1996, and observed on each occasion that plaintiff's complaints were "essentially the same" as during previous visits, that her physical back condition remained "essentially unchanged," and that she could continue to work within her given restrictions. During the entire period, moreover, Dr. Wentz maintained his original diagnosis of plaintiff's condition and did not alter his 18 June 1993 disability rating. *Cf. McLean*, 307 N.C. at 103, 296 S.E.2d at 459 ("physician's change of opinion with respect to degree of permanent partial disability" is evidence of a change in condition where he "examines his patient subsequent to the date of his first opinion and in the interim the patient's physical condition has deteriorated"). Once more, the Commission's findings of fact are supported by competent evidence and conclusive on appeal. *See Hoyle*, 122 N.C. App. at 463, 470 S.E.2d at 358 (Commission's factual findings "conclusive on appeal if supported by competent evidence").

Finally, plaintiff's ultimate contention is that the Commission's findings do not support its conclusion that she failed to demonstrate a change of condition under G.S. § 97-47. Plaintiff insists a

> substantial change in condition [wa]s proven both by the increased pain which she began suffering [12 January 1995,] and because of the substantial decrease in [her] ability to earn wages which began on January 11th and has subsequently resulted in [her] inability to earn any wages.

An employee may show decrease in earning capacity due to an increase in disability, *see Blair*, 124 N.C. App. at 423, 477 S.E.2d at 192, in any of four ways:

> (1) the production of medical evidence that [s]he is physically or mentally, as a consequence of the work related injury, incapable of work in any employment;
>
> (2) the production of evidence that [s]he is capable of some work, but that [s]he has, after a reasonable effort on h[er] part, been unsuccessful in h[er] effort to obtain employment;
>
> (3) the production of evidence that [s]he is capable of some work but that it would be futile because of preexisting conditions, *i.e.*, age, inexperience, lack of education, to seek other employment; or
>
> (4) the production of evidence that [s]he has obtained other employment at a wage less than that earned prior to the injury,

Russell v. Lowes Product Distribution, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993). In the case *sub judice*, plaintiff failed to prove a decrease in her earning capacity following entry of the

final award of compensation through any of these methods.

Medical evidence, including the reports and depositions of Dr. Wentz and Dr. Delaney, consistently indicate plaintiff was able and indeed encouraged to seek employment within her light-duty restrictions. On 4 June 1993, Dr. Wentz examined plaintiff and advised her to "seek similar light work during the summer months[']" recess in her librarian's assistant position. On 18 June 1993, Dr. Wentz rated plaintiff's back 7½% permanently partially disabled and released her to work under the following restrictions: avoid bending, stooping, prolonged standing and lifting greater than ten pounds. Throughout the next two years of treatment with Dr. Wentz, plaintiff's complaints, her work restrictions, and the diagnosis and disability rating of Dr. Wentz remained the same.

On 9 February 1995, Dr. Delaney examined plaintiff, found "no organic evidence explaining [her] complaints," and "recommend[ed] that [she] return to work as there is no evidence of organic pathology which would contraindicate" her return. Dr. Delaney continued plaintiff on the same light-duty work restrictions prescribed by Dr. Wentz, noting he felt plaintiff could "handle activities" within those limitations and that it was "absolutely" important for her to remain active.

Following plaintiff's 16 February 1995 incident, Dr. Wentz excused her from work for thirty days, but reported on 10 March

1995 that plaintiff's condition "has improved and [he] would like to see her try light work beginning April 3rd." Although Dr. Wentz stated in a 15 May 1995 letter that plaintiff was unable to work for an indefinite period of time, he explained the letter had been written based upon plaintiff's pending approval for state benefits and that, absent such approval, he felt plaintiff could have continued employment with Carteret Schools in a "very light position." After a 25 July 1995 examination, Dr. Wentz continued plaintiff under the identical work restrictions and, although imposing additional restrictions on 6 August 1996, rendered no indication that plaintiff was unable to perform within the designated limitations. In addition, following a 7 October 1996 examination, Dr. Wentz observed that plaintiff's back status "remain[ed] the same" as during previous visits.

In short, we hold plaintiff failed to prove an "incapa[city] [to] work in *any* employment," but rather maintained the ability to work within her given restrictions. *Russell*, 108 N.C. App. at 765, 425 S.E.2d at 457. Although "increased pain could result in a change of condition warranting additional compensation," *Lewis*, 122 N.C. App. at 150, 468 S.E.2d at 274 (citing *Dinkins v. Federal Paper Bd. Co.*, 120 N.C. App. 192, 195, 461 S.E.2d 909, 911 (1995)), the Commission herein found as fact, sustained by the notes and reports of Dr. Wentz and Dr. Delaney, that plaintiff's complaints, symptoms and ability to work following the February 1995 incident

remained unchanged and that her complaints of pain were not credible. These findings could in no way support a change of condition based upon increased pain. *See id.; see also Anderson*, 233 N.C. at 376, 64 S.E.2d at 268 (Commission may accept or reject testimony of witness solely on basis of whether it believes the witness and this determination will not be disturbed on appeal).

Plaintiff's proof also failed to establish lack of success in obtaining employment following a *reasonable* effort. *See Russell*, 108 N.C. App. at 765, 425 S.E.2d at 457. Plaintiff's own testimony was to the effect that, after learning no light-duty positions were available with Carteret Schools, she made no further effort to locate or secure employment with another employer within her work restrictions. *See Blair*, 124 N.C. App. at 424, 477 S.E.2d at 193 (employee failed to prove change of condition based on increased disability where employee "abandoned her efforts to seek employment").

Finally, plaintiff failed to establish that a return to work would be futile because of pre-existing conditions. *See Russell*, 108 N.C. App. at 765, 425 S.E.2d at 457. The record indicates plaintiff is a thirty-four year old high school graduate who has some computer training with no pre-existing condition which might prevent her from working within the light-duty restrictions. Because plaintiff failed to seek or secure opportunities with employers other than defendant, the fourth method pertaining to

performance of employment at less wages is inapplicable. *See id.*

In sum, after thorough review of each of plaintiff's numerous assignments of error, we hold that the Commission's challenged findings of fact are supported by competent evidence and thus conclusive on appeal, *see Hoyle*, 122 N.C. App. at 463, 470 S.E.2d at 358, and that the Commission's findings fully sustain its conclusion that plaintiff failed to demonstrate a change of condition under G.S. § 97-47, *see McLean*, 307 N.C. at 103-04, 296 S.E.2d at 459. Accordingly, the Opinion and Award of the Commission is affirmed in all respects.

Affirmed.

Chief Judge EAGLES and Judge HUNTER concur.

Report per Rule 30(e).