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NO. COA09-384

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2010

CHARLES R. BOWLES

Administrator of the
Estate of ARNOLD DEAN
BOWLES, Deceased
Employee-Plaintiff,

v.

From the North Carolina
Industrial Commission
I.C. File No.: 226563

NORANDAL, USA,
Employer-Defendant

and

CIGNA/ACE USA/ESIS,
Carrier-Employer-
Defendant.

Appeal by Plaintiff from Opinion and Award of the North Carolina Industrial Commission entered 4 December 2008. Heard in the Court of Appeals 30 September 2009.

Wallace and Graham, P.A., by Edward L. Pauley, for Plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Harmony Whalen Taylor and William A. Smith, for Defendant-appellee.

ERVIN, Judge.

Plaintiff Charles R. Bowles, acting in his capacity as administrator of the estate of Arnold Dean Bowles, appeals from a

4 December 2008 Opinion and Award of the Industrial Commission by Commissioner Christopher Scott denying a claim for workers' compensation benefits based upon a contention that Arnold Bowles suffered and, eventually, died from asbestosis as the result of exposure to asbestos that occurred during the course and scope of his employment with Norandal, USA. After careful consideration of the record in light of the applicable law, we conclude that the Commission's decision should be affirmed.

I. Factual Background

A. Substantive Facts¹

The Norandal facility is located in Salisbury and was constructed in approximately 1965.² Plaintiff worked for Norandal and its predecessors from October 1966 until 23 June 1992.

At the Salisbury facility, raw and scrap aluminum is converted to foils of various grades and thicknesses. In the course of the manufacturing process, aluminum is melted and the molten aluminum is extruded through heat resistant "tips" to form sheets. After

¹ The statement of substantive facts contained in this opinion is drawn primarily from the findings of fact contained in the Commission's order, none of which, with the exception of its discussion of the cause of death issue, were challenged in any way in Plaintiff's brief.

² The Salisbury plant was originally constructed by Republic Steel. Subsequently, the plant was purchased by National Aluminum. Norandal bought the Salisbury plant in 1989.

the sheets are formed, they are transported to a rolling mill, reduced to a thinner gauge material, and then wound onto a core as either double or single sheets. The coils are then placed into annealing furnaces, where the aluminum is made stronger and more flexible and where oils and other residues from the production process are removed.

The "tips" used during the manufacturing process were made from machined Maranite, a substance that resembles sheet rock in appearance, but is much harder. The machining process used to make these "tips" involved drilling, sawing, and sanding Maranite sheets in order to produce the desired shape. During the 1960s and 1970s, the Maranite used in the Salisbury plant contained 25% to 50% asbestos. The Maranite manufacturer stopped making the asbestos-based product in 1978, so a ceramic-based product came into use at the Salisbury plant after the asbestos-based product ceased being available.

In addition, the annealing furnaces used in the Norandal facility contained asbestos insulation in the walls, ceilings, and floors. Although there was no exposed asbestos insulation at the time that the furnaces were installed, insulation had begun to fall from the furnace walls by 1985. Testing performed upon the insulation revealed that it contained 5% to 8% asbestos. The insulation in the annealing furnaces was removed on a furnace by

furnace basis from 1990 through 1998. The insulation in the annealing furnaces continued to deteriorate during the abatement process. Testing performed during the abatement of the first furnace revealed the presence of block insulation containing 15% to 30% asbestos and duct insulation containing 35% to 55% asbestos.

At the time that he initially came to work at the Norandal facility, Arnold Bowles worked as a scrap handler and a mill helper in the rolling mill department. Arnold Bowles became a mill operator in March, 1967, and worked in that capacity until 1978, when he became "a utility worker for the separators in the finishing department." In July, 1980, Arnold Bowles worked as a furnace operator in the casting department for two months before returning to a utility worker position. In January, 1981, Arnold Bowles returned to the casting department and worked as a furnace operator until July, 1984, when he became a roll grinder. Arnold Bowles' employment was terminated effective 23 July 1992.

During the time that he worked in the rolling department, Arnold Bowles' workstation was located close to either the Maranite shop or the electrical room, depending on which machine he was assigned to operate. In addition, Arnold Bowles occasionally entered the Maranite shop, possibly because it was cooler than other parts of the plant. After Arnold Bowles transferred to the casting department in 1980, he would not have been exposed to much

asbestos dust since the casting department was located in the new building and since "there was no independent evidence of asbestos-containing material in the new building." Although Arnold Bowles was observed working in the "tip" shop after he had been assigned to the casting department, the record did not clearly establish that the material used in the "tip" shop at that time continued to contain asbestos. Despite the fact that the roll grinding department was located in the original building, Arnold Bowles apparently did not work near sources of asbestos dust during his tenure as a roll grinder. According to the Commission, Arnold Bowles "did not appear to have had nearly as extensive an exposure to asbestos dust in his positions with the company as the employees who regularly worked with the annealing furnaces."

In January, 2001, Arnold Bowles' attorney had chest x-rays sent to Dr. Phillip Lucas of Jackson, Mississippi. According to Dr. Lucas, the x-rays revealed the presence of "irregular interstitial opacities in the mid and lower lungs with a profusion of 1/0, but there were no pleural changes demonstrated." In his report, Dr. Lucas indicated that he observed "[b]ilateral interstitial fibrotic changes consistent with asbestosis in a patient who has had adequate exposure history and latent period." At the time of a subsequent reading of these x-rays, Dr. James

Clifton Johnson "found interstitial opacities with a profusion of 1/1."

On 27 October 2001, Dr. David A. Schwartz, a pulmonologist at Duke Medical Center, examined Arnold Bowles and reviewed chest x-rays. Pulmonary function testing indicated "mildly reduced lung volumes" and "elevated residual volumes." In Dr. Schwartz' opinion, Arnold Bowles "had evidence of interstitial lung disease, with a profusion of 1/1" and, given his "previous history of reduced lung volumes, asbestos exposure, and progressive shortness of breath," "has asbestosis."

Defendants sent Arnold Bowles' films to Dr. Philip Goodman, a radiologist at Duke Medical Center. According to Dr. Goodman, "[t]here appeared to be possible peripheral linear opacities within the lung parenchyma," but "the markings could have been due to artifact." In spite of certain film quality issues,³ Dr. Goodman determined "that there was no evidence of asbestos-related pleural disease." Dr. Michael S. Alexander read the same x-rays and "saw no interstitial abnormalities," "no pleural thickening or calcification," and no "evidence of asbestos-related disease."

³ Dr. Goodman "found [Arnold Bowles'] films to be underexposed and contrasty, with linear artifacts over part of the left lung." According to Dr. Goodman, the "film quality issues" could explain the "possible peripheral linear opacities within the lung parenchyma." In order to make sure, however, Dr. Goodman recommended that Arnold Bowles have a CT scan.

Arnold Bowles had a preoperative x-ray taken at the Veterans Administration Hospital "which appeared to show a mass in the pleural space" which had not appeared on his January 2001 x-rays. On 8 November 2003, Arnold Bowles' daughter found him at his home in an unresponsive state and called for emergency assistance.⁴ At the time that he arrived at the hospital, Arnold Bowles was paralyzed. Dr. Roy C. Agner admitted Arnold Bowles to the intensive care unit "with initial impressions of respiratory failure, probably due primarily to pneumonia but with a possible element of heart failure, probable chronic lung disease due to his smoking history⁵ and a recent gastrointestinal bleed."⁶

Arnold Bowles did not regain consciousness after being admitted to the hospital. An EEG revealed "evidence of a severe, diffuse encephalopathy, probably due to hypoxemia." According to Dr. Hill, a neurologist who examined Arnold Bowles on 10 November 2003, his "prognosis for significant functional recovery w[as]

⁴ Arnold Bowles had a history of diabetes which "was generally poorly controlled" and of having difficulties with his weight.

⁵ Arnold Bowles told Dr. Schwartz that he smoked heavily from 1950 until 1996, at which time which he quit smoking completely.

⁶ Plaintiff disputes the accuracy and completeness of the Commission's findings concerning Dr. Agner's testimony. However, as will be discussed in more detail below, we conclude that the Commission did not commit prejudicial error in its findings with respect to the cause of Arnold Bowles' death.

quite poor." Given his severe brain damage, Arnold Bowles was removed from life support and died on 11 November 2003. Arnold Bowles' final diagnosis "included respiratory failure secondary to pneumonia and congestive heart failure, severe brain damage due to lack of oxygen, chronic renal failure due to diabetes, hypertension, and chronic lung disease, a mass in his left upper lung thought to be cancerous⁷ and ischemic heart disease with a probable small myocardial infarction."

An autopsy performed on Arnold Bowles' lungs by Dr. Joel M. Weber disclosed that, while the mass discovered in his lung was malignant, it "probably did not contribute to [his] death."⁸ In addition, the autopsy revealed evidence of "resolving pneumonia, a small blood clot, changes due to emphysema, anthracosis in two lymph nodes, and no ferruginous bodies." Finally, there was no "indication of interstitial fibrosis."

B. Procedural Facts

⁷ A chest x-ray performed upon Arnold Bowles' admission to the hospital showed the presence of the left lung lesion that had been identified on the 24 October 2003 preoperative chest x-ray.

⁸ As was the case with Dr. Agner's testimony, Plaintiff disputes the accuracy and completeness of the Commission's findings concerning the testimony of Dr. Weber. However, as we will discuss in more detail later in this opinion, we do not believe that the Commission committed any error in its findings concerning Dr. Weber's testimony.

On 4 April 2002, Arnold Bowles filed a Form 18B seeking workers compensation benefits for asbestosis. On 12 November 2002, Norandal and ACE USA filed a Form 61 denying the compensability of Arnold Bowles' claim.⁹ On 17 April 2003, Arnold Bowles requested that his claim be assigned for hearing. On 24 April 2003, Norandal and Cigna/ACE USA submitted a Response to Request that Claim be Assigned for Hearing in which they denied the compensability of Arnold Bowles' claim for workers' compensation benefits. On 4 February 2003, Arnold Bowles, Norandal, and CIGNA/ACE entered into a stipulation which recited, among other things, that Defendants "deny that [Arnold Bowles] was exposed to the hazards of asbestos during his employment with Norandal" and that, in the event that Arnold Bowles "was injuriously exposed to the hazards of asbestos during his employment with Norandal," then "CIGNA/ACE and Norandal shall be responsible for any benefits awarded to [Arnold Bowles] for any occupational disease or other compensable condition under the Workers' Compensation Act."¹⁰ On 19 February 2004, Plaintiff

⁹ Norandal and ACE USA/ESIS submitted another Form 61 denying the compensability of Plaintiff's claim on 23 February 2004.

¹⁰ The Commission found that Global Indemnity, Royal and SunAlliance, Argonaut Insurance Company, National Union and Cigna/ACE USA/ESIS "provided workers' compensation coverage during [Arnold Bowles'] employment with" Norandal. Norandal and National Union Fire Insurance Company submitted a Form 61 denying the compensability of Arnold Bowles' claim on 29 October 2002. Norandal and Argonaut Insurance submitted a Form 61 denying the

filed a Form 18B seeking workers compensation benefits stemming from the death of Arnold Bowles, which Plaintiff alleged to have "aggravated and/or accelerated other pulmonary and cardiac problems . . . such that it either caused, significantly contributed to or hastened [Arnold Bowles'] death."

Plaintiff's claim was consolidated for hearing with similar claims advanced against Norandal by five other claimants.¹¹ Plaintiff's claim came on for hearing before Deputy Commissioner George T. Glenn, II, on 1 March 2004. Prior to the hearing, Deputy Commissioner Glenn ruled that, since Defendants "had not filed a Form 61 within 90 days of the initiation of [Arnold Bowles'] claim," they were "barred . . . from disputing the compensability of [Plaintiff's] claim." On 8 March 2005, Deputy Commissioner Glenn entered an Opinion and Award in which he found that neither Norandal nor its workers' compensation carrier had filed a Form 61

compensability of Arnold Bowles' claim on 17 December 2002. In light of the parties' stipulation, the Commission concluded that "Cigna/ACE USA/ESIS shall be responsible for any workers' compensation benefits awarded to [Plaintiff] as a result of [Arnold Bowles'] employment with" Norandal.

¹¹ The other proceedings consolidated with Plaintiff's claim for hearing were brought by Rondall O. Everhardt, William W. Pepper, Bobby Lee Plummer, Derwood Sink Puckett, and Alfred Thomas Daywalt. Commission orders entered in two of these cases have been appealed to this Court and are decided contemporaneously with this case in *Pepper v. Norandal, USA* (No. COA09-383) and *Plummer v. Norandal, USA* (No. COA09-382).

denying compensability and setting out a detailed justification for denying compensability in a timely manner. In addition, Deputy Commissioner Glenn found that Norandal and its carrier had failed to properly respond to discovery. As a result, Deputy Commissioner Glenn awarded Arnold Bowles' estate compensation for injury to each of his lungs; awarded Arnold Bowles' next of kin 400 weeks of benefits at the rate of \$468.52 per week; awarded burial expenses to Arnold Bowles' estate; increased the award by 10% based on a determination that "[t]he injury and death of [Arnold Bowles] was caused by the wilful failure of employer to comply with statutory requirements;" and ordered the payment of attorneys fees to Plaintiff's counsel on the grounds that the "defense of the matter was not based upon reasonable grounds but was based upon stubborn and unfounded litigiousness for which [P]laintiff should recover attorneys fees as part of the costs of this action." Defendants appealed to the Commission from Deputy Commissioner Glenn's order.

On 12 September 2005, after hearing the arguments of counsel and studying the parties' briefs, the Commission, in an Order by Commissioner Christopher Scott, concluded that "[t]he appealing party has shown good ground to reconsider the evidence in this matter;" reversed "the verbal Order of Deputy Commissioner Glenn made on or about February 25, 2004;" vacated "the March 8, 2005 Opinion and Award of Deputy Commissioner Glenn;" and remanded "the

matter to a deputy commissioner for a full evidentiary hearing on all issues in this matter." Although Plaintiff noted an appeal to this Court from the Commission's order, we dismissed Plaintiff's appeal on the grounds that it had been taken from an unappealable interlocutory order on 10 January 2006.

A consolidated hearing involving this and four other cases¹² took place before Chief Deputy Commissioner Stephen T. Gheen beginning 1 May 2006. In an Opinion and Award filed 31 January 2008, Chief Deputy Commissioner Gheen denied Plaintiff's claim for workers' compensation benefits arising from Arnold Bowles' employment at the Norandal facility. Plaintiff appealed Chief Deputy Commissioner Gheen's decision to the Commission. By means of an Opinion and Award by Commissioner Christopher Scott filed 4 December 2008, the Commission affirmed Chief Deputy Commissioner Gheen's order "with minor modifications." In reaching this decision, the Commission found that:

33. Dr. Johnson indicated that the autopsy findings were inconsistent with his reading of the x-ray but stated that the autopsy would be the gold standard for determining what was actually in [Arnold Bowles'] lungs.

34. Despite the x-ray appearance of interstitial abnormalities, at least to some

¹² The record does not reflect which of the five cases listed in Footnote No. 10 above was not considered at the 1-2 May 2006 hearing held before Chief Deputy Commissioner Gheen.

of the reviewing doctors, [Arnold Bowles] actually had no interstitial fibrosis in his lungs. The autopsy provided the most reliable information concerning what was in his lungs and it revealed that he did not have asbestosis or any other asbestos-related lung disease.

35. As of the date of his death, [Arnold Bowles] had not developed asbestosis. Plaintiff also did not prove that [Arnold Bowles] otherwise developed an occupational disease which was due to causes and conditions characteristic of his employment with [Norandal] and which excluded all ordinary diseases of life to which the general public was equally exposed.

Based upon these findings, the Commission concluded that, "[a]s of the date of death, [Arnold Bowles] had not developed asbestosis, the characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust," and denied Plaintiff's claim for workers' compensation benefits arising from Arnold Bowles' employment with Norandal. Plaintiff noted an appeal to this Court from the Commission's order on 17 December 2008.

II. Substantive Legal Analysis

A. Failure to Make Findings and Conclusions

First, Plaintiff contends that the 12 September 2005 order should be remanded to the Commission because it lacked the necessary findings of fact and conclusions of law. For the reasons set forth in our opinion in *Plummer*, we conclude that the Commission did not err by failing to include findings of fact or

conclusions of law in its order reversing Deputy Commissioner Glenn's oral order of approximately 25 February 2004, vacating Deputy Commissioner Glenn's order of 8 March 2005, and remanding this case for a full hearing on all issues that were in dispute between the parties.

B. Failure to File and Serve a Statement of Denial
Within 14 Days of Notice of Plaintiff's Claim

____Secondly, Plaintiff contends that the Commission erred by failing to uphold the decision of Deputy Commissioner Glenn to the effect that Defendants waived the right to contest the compensability of his claim for workers' compensation benefits by failing to notify the Commission and Plaintiff that they denied his right to receive workers' compensation benefits within 14 days of receiving notice of Plaintiff's claim as required by N.C. Gen. Stat. § 97-18(c). For the reasons set forth in our opinion in *Plummer*, we conclude that the Commission did not err by reversing the oral order entered by Deputy Commissioner Glenn on approximately 25 February 2004, vacating the order entered by Deputy Commissioner Glenn on 8 March 2005, and remanding this case to a deputy commissioner for a full hearing on the merits.

C. Sufficiency of the Commission's Consideration of the
Evidence Relating to the Cause of Death

Finally, Plaintiff contends that the Commission failed to heed our admonition not to "ignore, discount, disregard or fail to

properly weigh and evaluate any of the competent evidence before it," *Ward v. Beaunit Corp.*, 56 N.C. App. 128, 134, 287 S.E.2d 464, 467 (1982) (citing *Harrell v. J.P. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835 (1980), *disc. review denied*, 305 N.C. 152, 289 S.E.2d 329 (1982)), in determining that Arnold Bowles' death did not stem from an occupational disease. After careful consideration of Plaintiff's arguments in light of the relevant legal principles, we conclude that the Commission did not commit prejudicial error in its consideration of the evidence upon which Plaintiff's argument hinges.

"On appeal, we review decisions from the Industrial Commission to determine whether any competent evidence supports the findings of fact and whether the findings of fact support the conclusions of law." *Silva v. Lowe's Home Improvement*, ___ N.C. App. ___, ___, 676 S.E.2d 604, 609 (2009) (citing *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 700 (2004)). The Commission's findings of fact are conclusive for purposes of appellate review if they are supported by competent evidence, even if the evidentiary record would also support a contrary finding. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). On the other hand, the Commission's conclusions of law are subject to *de novo* review. *Long v. Morganton Dyeing & Finishing Co.*, 321 N.C. 82, 86, 361 S.E.2d 575,

577 (1987). Although the Commission "may not wholly disregard competent evidence," *Harrell*, 45 N.C. App. at 205, 262 S.E.2d at 835, it "is not required to find facts as to all credible evidence," since such a "requirement would place an unreasonable burden on the Commission." *London v. Snak Time Catering, Inc.*, 136 N.C. App. 473, 476, 525 S.E.2d 203, 205 (2000) (citing *Woolard v. N.C. Dept. Of Transp.*, 93 N.C. App. 214, 218, 377 S.E.2d 267, 269 (1989), *cert. denied* 325 N.C. 230, 381 S.E.2d 792, *cert. denied*, 325 N.C. 230, 381 S.E.2d 792 (1989)).

It is the duty of the Commission to consider *all* of the competent evidence, make *definitive* findings, draw its conclusions of law from these findings, and enter the appropriate award. In making its findings, the Commission's function is "to weigh and evaluate the *entire* evidence and determine as best it can where the truth lies." *West v. J.P. Stevens*, 6 N.C. App. 152, 156, 169 S.E.2d 517, 519 (1969). [emphasis added in original] To weigh the evidence is not to "discount" it. To weigh the evidence means to ponder it carefully; it connotes consideration and evaluation; it involves a mental balancing process. To "discount" the evidence, on the other hand, is to disregard it, to treat it as though it had never existed, to omit it from consideration. While the Commission is the sole judge of the credibility of witnesses and may believe all or a part or none of any witness's testimony, *Morgan v. Thomasville Furniture Industries, Inc.*, 2 N.C. App. 126, 162 S.E.2d 619 (1968), it nevertheless may not wholly disregard competent evidence. Contradictions in the testimony go to its weight, and the Commission may properly refuse

to believe particular evidence. But, it must first consider the evidence

Harrell, 45 N.C. App. at 205, 262 S.E.2d at 835. The Commission violates the rule against discounting competent evidence when it fails to mention the competent testimony of an important witness in its opinion and award, *Sheehan v. Perry M. Alexander Construction Co.*, 150 N.C. App. 506, 515, 563 S.E.2d 300, 306 (2002) (stating that, "[i]n its first opinion and award, the Commission made no mention whatsoever of Dr. Shaver's testimony," forcing us "to conclude that the Commission had" impermissibly disregarded his testimony); *Jenkins v. Easco Aluminum Co.*, 142 N.C. App. 71, 78, 541 S.E.2d 510, 515 (2001), *aff'd*, 165 N.C. App. 86, 598 S.E.2d 252 (2004) (holding that the Commission erred because "there was no mention at all of Dr. Downes' testimony in the opinion and award" despite the fact that his "testimony was certainly relevant to the exact point in controversy"); *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 681, 486 S.E.2d 252, 254 (1997) (holding that the Commission erred because, "in finding facts, the Commission made no definitive findings to indicate that it considered or weighed Dr. Comstock's testimony with respect to causation"), or when it expressly indicates that it discounted (as defined by *Harrell*) that testimony. *Harrell*, 45 N.C. App. at 204-06, 262 S.E.2d at 834-35 (holding that the Commission impermissibly

and expressly discounted the testimony of a pulmonary specialist who examined the plaintiff pursuant to Commission order and who diagnosed the plaintiff as suffering from byssinosis because the history that plaintiff gave to this pulmonary specialist contradicted the history that he gave to other physicians). On the other hand, the fact that the Commission discussed the testimony of a particular witness indicates that it did not impermissibly discount his or her testimony, *Peagler v. Tyson Foods, Inc.*, 138 N.C. App. 593, 601-03, 532 S.E.2d 207, 212-13 (2000) (holding that the Commission did not impermissibly discount the testimony of the defendant's witnesses because the "record included the testimony of defendant's witnesses" and the Commission's factual findings "indicate[d] that it considered their testimony"); *Bryant v. Weyerhaeuser Co.*, 130 N.C. App. 135, 139, 502 S.E.2d 58, 61-62, *disc. review denied by* 349 N.C. 228, 515 S.E.2d 700 (1998) (holding that the Commission did not impermissibly discount the testimony of Dr. Alston since the Commission's findings "indicate that the Full Commission, in reaching its determination, considered the expert testimony of Dr. Alston" and since the Commission is not required to make "negative" findings "that it was rejecting evidence that would support a finding that Plaintiff was not depressed").¹³ Thus,

¹³ Alternatively, a finding of fact based on the testimony of a particular witness that was not consistent with that witness's

the operative issue for purposes of our injury is whether the Commission discussed the testimony of Dr. Agner, who signed Arnold Bowles' death certificate, and Dr. Weber, in its opinion and award.

According to Plaintiff, the Commission's "determin[ation] that the autopsy proved that there was no asbestosis or other occupational disease" "deviates from the facts and ignores and misstates the facts in the case." Plaintiff contends that Dr. Agner ascertained that, "at the time of [Arnold Bowles'] death, he had various ailments[,] including 'a history of lung disease attributed to asbestos.'" According to Plaintiff, Dr. Agner testified that "certain ailments, including asbestosis, contributed to [Arnold Bowles'] death." In addition, although conceding that Arnold Bowles died of respiratory failure, Plaintiff notes that the death certificate listed "history of asbestosis" "as another 'significant condition contributing to the death.'" According to the Plaintiff, the Commission failed to mention this evidence in its order and focused instead upon Dr. Weber's failure to find asbestos bodies in Arnold Bowles' lung tissues. In Plaintiff's opinion, the Commission acted unreasonably in relying on Dr. Weber's testimony for this purpose, since "[h]e testified that there can be asbestos fibers present in lung tissue without a

testimony would lack adequate evidentiary support.

finding of asbestos bodies" and that, "to properly make a diagnosis or to rule out asbestosis," one must have "clinical data as well as pathological data." As a result, Plaintiff contends that the Commission failed to consider all competent evidence relating to the cause of death issue before concluding that asbestosis did not contribute to Arnold Bowles' death.

The Commission clearly addressed the testimony of both Dr. Agner and Dr. Weber in its opinion and award. More particularly, the Commission found as fact that:

29. On November 8, 2003, [Arnold Bowles'] daughter found him unresponsive at his home and called the rescue squad. When he arrived at the hospital, his blood sugar level was 52 and he was paralyzed. His family indicated that he had been sick with the flu for about a week. Dr. Agner admitted him to the intensive care unit of the hospital with initial impressions of respiratory failure, probably due primarily to pneumonia but with a possible element of heart failure, probable chronic lung disease due to his smoking history and a recent gastrointestinal bleed.

30. [Arnold Bowles] did not regain consciousness in the hospital. A chest x-ray performed there revealed the lesion at his left lung that had been discovered at the Veterans Administration Hospital several weeks earlier. On November 10, 2003, Dr. Hill, a neurologist, evaluated him. The doctor performed an EEG which revealed evidence of a severe, diffuse, encephalopathy, probably due to hypoxemia. In his opinion, [Arnold Bowles'] prognosis for significant functional recovery w[as] quite poor.

31. In view of [Arnold Bowles'] severe brain damage, he was taken off of life support and he died on November 11, 2003. His final diagnoses included respiratory failure secondary to pneumonia and congestive heart failure, severe brain damage due to lack of oxygen, chronic renal failure due to diabetes, hypertension, and chronic lung disease, a mass in his left upper lung thought to be cancerous and ischemic heart disease with a probable small myocardial infarction.

Similarly, the Commission found as a fact with respect to the autopsy performed by Dr. Weber that:

32. The family requested an autopsy of [Arnold Bowles'] lungs, which was performed by Dr. Weber. Dr. Weber found that the mass was actually in the chest wall, not in the lung itself. It had eaten away part of a rib. Pathological examination showed that the mass was, in fact, malignant. However, it probably did not contribute to [Arnold Bowles'] death. The autopsy also revealed evidence of resolving pneumonia, a small blood clot, changes due to emphysema, anthracosis in two lymph nodes and no ferruginous bodies. There was no evidence of interstitial fibrosis.

Finally, the Commission found that Dr. Johnson acknowledged that, despite its inconsistency "with his reading of the x-ray," "the autopsy would be the gold standard for determining what was actually in [Arnold Bowles'] lungs;" that, "[d]espite the x-ray appearance of interstitial abnormalities" "to some of the reviewing doctors," Arnold Bowles "actually had no interstitial fibrosis in his lungs;" that "the autopsy provided the most reliable information concerning what was in [Arnold Bowles'] lungs;" and

that the autopsy "revealed that [Arnold Bowles] did not have asbestosis or any other asbestos-related lung disease."

Despite Plaintiff's contention to the contrary, we conclude that the Commission did not impermissibly discount the testimony of Dr. Agner and Dr. Weber. Instead, the Commission's order specifically discusses the testimony of both witnesses; the fact that the Commission neither expressly indicated that it "discounted" their testimony, within the meaning of *Harrell*, nor failed to make any reference to it insulates the Commission's order from a successful "discounting" challenge insofar as their testimony is concerned. Plaintiff's real objection to the Commission's treatment of the testimony of Dr. Agner and Dr. Weber is that it does not summarize and discuss information contained in their testimony (or, in the case of Dr. Agner, the death certificate that Dr. Agner signed) that Plaintiff believes to be supportive of his position. The Commission was not, however, required to make the findings as Plaintiff would have preferred for two different reasons. First, as we have already noted, it is well-established that the Commission is entitled to believe all, a part, or none of what a particular witness has to say. *Morgan*, 2 N.C. App. at 127, 162 S.E.2d at 620. For that reason, the mere fact that the Commission did not comment on every aspect of a particular witness' testimony does not render its order legally

deficient. Secondly, as we have also already noted, the Commission is not required to "find facts as to all credible evidence." *London*, 136 N.C. App. at 476, 525 S.E.2d at 206. As long as the findings that the Commission does make are adequately supported by the record, the Commission need not comment on those aspects of the record that would have arguably supported a different finding. At bottom, Plaintiff's arguments represent an attack upon the Commission's judgments relating to the weight and credibility of the evidence, both of which are binding on appeal. As a result, since the Commission's findings of fact have not been challenged as lacking adequate evidentiary support, since the Commission made findings and conclusions on all the relevant issues, and since the Commission did not inappropriately discount the testimony of any witness, we conclude that the Commission did not err in determining that Arnold Bowles had not developed asbestosis as of the date of his death.

III. Conclusion

Thus, for the reasons set forth above, we conclude that the Commission did not err by failing to make findings and conclusions in its 12 September 2005 order; by reversing Deputy Commissioner Glenn's oral order of approximately 25 February 2004, vacating Deputy Commissioner Glenn's order of 8 March 2005, and remanding this case to a deputy commissioner for a full hearing on the

merits; or by failing to consider all competent evidence in the record bearing on the cause of death issue. Thus, the Commission's order is affirmed.

AFFIRMED.

Judges GEER and STROUD concur.

Report per Rule 30(e)