IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-405

Filed: 1 March 2016

North Carolina Industrial Commission, I.C. Nos. 361533, 362161

LENORA ANDERSON-GREEN, Employee, Plaintiff,

v.

N.C. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DOROTHEA DIX HOSPITAL, Employer, SELF-INSURED (CORVEL CORP., Third-Party Administrator), Defendant.

Appeal by Plaintiff from opinion and award entered 27 October 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 5 October 2015.

Curtis C. Coleman, III, P.A., by Curtis C. Coleman, III, for Plaintiff–Appellant.

Attorney General Roy Cooper, by Assistant Attorney General Cathy Hinton Pope, for Defendant–Appellee.

McGEE, Chief Judge.

Lenora Anderson-Green ("Plaintiff") appeals from an opinion and award from the North Carolina Industrial Commission ("the Commission") denying Plaintiff's claims for additional medical compensation and disability benefits from the North Carolina Department of Health and Human Services ("DHHS"). We affirm.

In 2003, Plaintiff was employed as a healthcare technician in the female adult

psychiatric admissions unit of Dorothea Dix Hospital ("the hospital"), a DHHS-operated, inpatient psychiatric hospital facility in Raleigh, North Carolina, which facility has since closed. As a healthcare technician, Plaintiff was responsible for direct patient care by taking patients' vital signs, assisting patients in activities of daily living, escorting patients to have laboratory tests done, and "provid[ing] unlicensed therapy to patients as far as sitting with them, talking to them, [and] de-escalating them," which included "solving their problems; if they [became] upset, then helping [the patients] to work through their problems and getting help for them if they need[ed] assistance . . . [and] keep[ing] them calm."

In April 2003, after Plaintiff had been working in the hospital for several months, Plaintiff was assaulted by a patient who beat Plaintiff in the head. Although Plaintiff testified she suffered from headaches as a result of the assault, Plaintiff did not miss work and did not choose to seek medical treatment. Approximately three months later, on 18 July 2003, during the course and scope of her employment at the hospital, Plaintiff was assaulted from behind by a patient as Plaintiff was locking a door. The patient "began hitting [Plaintiff] in the head and pulling [Plaintiff's] hair." The patient pulled Plaintiff's hair with one hand and "beat [her] in the head" with the other hand. The patient continued to grab Plaintiff's hair, causing more handfuls of hair to come out of Plaintiff's head. As Plaintiff tried to release the patient's hand from the keychain Plaintiff was wearing around her neck, the patient "began kicking

and punching [Plaintiff] in the pelvic area" and caused Plaintiff's left arm to strike the corner of the wall and her left elbow to strike the floor as the patient pulled Plaintiff onto the floor and on top of her. Plaintiff sought medical treatment in the employee health unit of the hospital ("employee health"), and the 18 July 2003 incident was reported to Plaintiff's supervisor, Diana Younger, who was the unit nurse manager for female adult psychiatric admissions. Plaintiff reported that employee health treated her pain with ibuprofen and then with Flexeril. Because this incident occurred on a Friday, Plaintiff took only one or two additional days off after the weekend and then reported back to work.

Approximately one month later, on 23 August 2003, during the course and scope of her employment at the hospital, Plaintiff was again assaulted from behind by a patient. Plaintiff was sitting at the entrance of the dining room and a patient grabbed Plaintiff's hair with both hands and "swung" Plaintiff out of her chair and onto her knees. The patient "jerked" Plaintiff's head back and forth for approximately four minutes until two other healthcare technicians intervened. During the attack, the patient pulled out a portion of Plaintiff's hair and Plaintiff "lost consciousness." Plaintiff was taken to the employee emergency unit of the hospital, where she was again treated with ibuprofen and then with Flexeril. Plaintiff was sent home following the 23 August 2003 incident and she never returned to work at the hospital.

Plaintiff filed a Form 18[1] on 5 September 2003 for the 18 July 2003 incident. Plaintiff filed a second Form 18 on 26 September 2003 for the 18 July 2003 incident, and on that same day also filed a Form 18 for the 23 August 2003 incident. Plaintiff filed a Form 33[2] for both incidents on 5 March 2004, alleging injuries to her head, neck, shoulder, and left arm and hand, and seeking compensation from 23 August 2003 through the present, medical expenses, permanent and total disability, as well as "psychological & emotional damages." DHHS filed a Form 60[3] on 21 April 2004, and a Form 33R[4] on 5 May 2004, in which DHHS admitted that Plaintiff had a right to compensation for the 23 August 2003 incident with respect to Plaintiff's "Cervical Strain/Headaches/Psychological problems," but denied Plaintiff's claims for disability on the basis that it had "not received any medical evidence that [Plaintiff was] physically or mentally incapable of working," and that Plaintiff had been "incooperative [sic] in agreeing [to an] evaluation to assist in determining any disability" because Plaintiff would "not sign [the] medical authorization."

A hearing was calendared for 8 June 2004, but was continued at Plaintiff's request, without objection from DHHS, to allow Plaintiff to retain new counsel. The

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[1] The title of the Commission's Form 18 is "Notice of Accident to Employer and Claim of Employee, Representative, or Dependent (G.S. 97-22 through 24)."

[2] The title of the Commission's Form 33 is "Request that Claim Be Assigned for Hearing."

[3] The title of the Commission's Form 60 is "Employer's Admission of Employee's Right to Compensation (G.S. 97-18(b))."

[4] The title of the Commission's Form 33R is "Response to Request That Claim be Assigned for Hearing."

matter was next calendared for hearing on 24 September 2004, and on the day before the matter was to be heard, Plaintiff requested another continuance, which the deputy commissioner allowed. The matter was calendared for a third time in December 2004 and when Plaintiff failed to appear at the hearing, the deputy commissioner dismissed the matter with prejudice upon DHHS's motion. Plaintiff then requested that her claims be assigned for hearing by filing a Form 33 on 17 October 2005 for the 18 July 2003 incident and a Form 33 on 13 October 2005 for the 23 August 2003 incident. Plaintiff also filed a motion for appropriate relief in November 2005, in which she prayed that the Commission vacate the order dismissing her claims with prejudice and "reopen[] and reinstat[e] her claims." On 9 January 2006, the Commission granted Plaintiff's motion and entered an order "return[ing her cases] to the active hearing docket" with instruction that the cases "be reset for hearing in due course."

At Plaintiff's request, the Commission entered an order on 17 September 2009 removing Plaintiff's cases from the active hearing docket because Plaintiff's counsel "ha[d] recently been retained and ha[d] not had . . . the opportunity to complete discovery and prepare for a hearing." Three years later, Plaintiff again requested that her claims be assigned for hearing by filing Form 33s for each incident, which forms were dated 21 September 2012 and filed with the Commission on 24 September 2012. DHHS filed a Form 33R in response to Plaintiff's September 2012 filings,

asserting that Plaintiff's claims were barred by the statute of limitations, and filed a motion to dismiss Plaintiff's claims for her purported failure to prosecute her claims in accordance with the Commission's Rule 613.

The cases were consolidated and heard by a deputy commissioner on 11 June 2013. An opinion and award was filed by the deputy commissioner on 13 March 2014 denying Plaintiff's claims for further indemnity or medical compensation resulting from her injuries on 18 July 2003 and 23 August 2003. Plaintiff appealed to the Full Commission, which heard the matter on 25 August 2014. The Commission issued its opinion and award on 27 October 2014, in which it affirmed the deputy commissioner's opinion and award with minor modifications. In its opinion and award, the Commission concluded the following:

> Plaintiff properly filed a Form 33 on 13 October 2005, less than two years after the last payment of medical compensation which was made on 22 November 2004. However, after several continuances requested by Plaintiff, a hearing was never held and the claim was removed from the active hearing calendar. On 21 September 2012, Plaintiff filed a subsequent Form 33 and the matter was heard on 11 June 2013. Plaintiff argues that her 13 October 2005 Form 33 qualifies as an application for additional medical compensation pursuant to subsection (i) of N.C. Gen. Stat. § 97-25.1 and thus tolls the two-year statute of limitations. Although Plaintiff's 13 October 2005 Form 33 was filed prior to the two[-]year time limitation, no hearing arose out of this Form 33 and at no time thereafter was Plaintiff awarded additional medical compensation pursuant to N.C. Gen. Stat. § 97-25.1. Instead, Plaintiff, through counsel, moved for her claims to be removed from the hearing docket and [the] Deputy

Commissioner . . . entered an Order removing [Plaintiff's] claims from the hearing docket. More than two years elapsed from the time the claim was removed from the hearing docket before the most recent Form 33 was filed on 21 September 2012. The Full Commission concludes that Plaintiff's 13 October 2005 Form 33 was not "thereafter approved by the Commission" as required by N.C. Gen. Stat. § 97-25.1 and therefore does not toll the two-year statute of limitations. As such, Plaintiff's claims are barred by N.C. Gen. Stat. § 97-25.1 and must be denied.

The Workers' Compensation Rules provide, in part, that "any claim may be dismissed with or without prejudice by the Industrial Commission on its own motion or by motion of any party for failure to prosecute[.]" A court must consider three factors when considering whether to dismiss a claim for failure to prosecute pursuant to Workers' Compensation Rule 613(4): (1) whether the plaintiff acted in a manner which deliberately or unreasonably delayed the matter; (2) the amount of prejudice, if any, to the defendant [caused by the plaintiff's failure to prosecute]; and (3) the reason, if one exists, that sanctions short of dismissal would not suffice.

. . . Plaintiff's claims have been set for hearing and continued numerous times over a period of almost ten years. Plaintiff failed to appear at her first hearing in June of 2004, leading to the dismissal, albeit temporary, of her claims. Further, Plaintiff moved to have her claims removed from the active docket and waited over three years before she filed a new Form 33 seeking their return to the hearing calendar. Based upon a preponderance of the evidence of record, the Full Commission concludes that Plaintiff's delay in prosecuting her claims was unreasonable. . . . Plaintiff's failure to prosecute her claims has resulted in material prejudice to Defendant. The competent evidence demonstrates that this delay has prevented Defendant from obtaining relevant medical records, interviewing necessary witnesses and fully investigating Plaintiff's claims of psychological and mental

> injuries, and alleged related disability. Defendant has also expended considerable time and resources in maintaining a protracted defense as a result of Plaintiff's unreasonable delays. The Full Commission concludes that Defendant suffered material prejudice as a result of Plaintiff's unreasonable failure to timely prosecute her claims. Due to Plaintiff's failure to timely prosecute her claims, relevant medical evidence has been purged, potential witnesses have been lost and Defendant's ability to investigate has been substantially impaired. Thus, the Full Commission concludes that Defendant's ability to fully defend this action has been irreparably compromised and that any sanction short of dismissal would be wholly inadequate in this case.

(Alterations in original) (Citations omitted). Because the Commission determined that Plaintiff's claims were barred as a result of Plaintiff's failure to act in accordance with the requirements set forth in N.C. Gen. Stat. § 97-25.1 and Workers' Compensation Rule 613, the Commission declined to render any conclusions of law with respect to Plaintiff's claims for additional medical compensation and temporary total disability benefits and denied such claims. Plaintiff appeals.

"The findings of fact by the Industrial Commission are conclusive on appeal if supported by any competent evidence," *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (internal quotation marks omitted), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999), "even though there be evidence that would support findings to the contrary." *Id.* (internal quotation marks omitted). "The evidence tending to support [a] plaintiff's claim is to be viewed in the light most favorable to [the] plaintiff, and [the] plaintiff is entitled to the benefit of every reasonable

inference to be drawn from the evidence." *Id.* "Thus, on appeal, this Court does not have the right to weigh the evidence and decide the issue on the basis of its weight. The [C]ourt's duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Id.* (internal quotation marks omitted). "However, the Industrial Commission's conclusions of law are reviewable *de novo*." *Johnson v. Herbie's Place*, 157 N.C. App. 168, 171, 579 S.E.2d 110, 113, *disc. review denied*, 357 N.C. 460, 585 S.E.2d 760 (2003).

I.

Plaintiff first contends the Commission erred by determining that her claims should be dismissed as a result of her failure to comply with the requirements set forth in Workers' Compensation Rule 613. Plaintiff asserts the Commission erred when it rejected Plaintiff's assertion that the Form 33s she filed in September 2012 — which were filed three years after the Commission granted Plaintiff's September 2009 request to remove the cases from the active hearing docket — "reinstat[ed] the cases to the hearing docket" and placed them "in the same position" held by Plaintiff's timely October 2005 Form 33 filings. We disagree.

At the time of Plaintiff's injury by accident in 2003,[5] North Carolina's Workers'

[5] Since Plaintiff's claims arose in 2003, we review Plaintiff's issues on appeal under the statutes and rules in effect at the time of Plaintiff's injury. *See, e.g.*, *Poole v. Univ. of N.C.*, __ N.C. App. __, __ n.1, 762 S.E.2d 223, 224 n.1 (2014) ("As [the] plaintiff's claim arose in 1992, [the] plaintiff's claim for continuing medical compensation must be considered under [N.C. Gen. Stat.] § 97-25 (1992)."), *aff'd per curiam*, 368 N.C. 34, 769 S.E.2d 838 (2015).

Compensation Rule 613(2) provided as follows:

> (a) A claim may be removed from the hearing docket by motion of the party requesting the hearing or by the Industrial Commission upon its own motion.
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> (b) A removed case may be reinstated by motion of either party; provided that cases wherein the issues have materially changed since the Order of Removal or where the motion to reinstate is filed more than one year after the Order of Removal, a Form 33 Request for Hearing will be required.
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> (c) When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal requested by the plaintiff or necessitated by the plaintiff's conduct, and not pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the Industrial Commission on its own motion or by motion of any party.

Workers' Comp. R. of N.C. Indus. Comm'n 613(2), 2003 Ann. R. (N.C.) 842. Thus, Rule 613 provided that when a plaintiff "ha[d] not requested a hearing within two years of the filing of an Order of Removal," the Commission had the authority to decline to reinstate a case that had been removed, and to dismiss with prejudice any claim for which a Form 33 had not been filed "within two years of the filing of an Order of Removal." *See* Workers' Comp. R. of N.C. Indus. Comm'n 613(2)(c), 2003 Ann. R. (N.C.) 842. Plaintiff cites no relevant legal authority, and we find none, to support her assertion that Rule 613 obligated or compelled the Commission to reinstate Plaintiff's 2005 claims for additional medical compensation when she filed

her Form 33s in September 2012.

II.

Plaintiff next contends the Commission erred by concluding that "Defendant suffered material prejudice as a result of Plaintiff's unreasonable failure to timely prosecute her claims[,]" and that, due to this failure, "relevant medical evidence ha[d] been purged, potential witnesses ha[d] been lost and Defendant's ability to investigate ha[d] been substantially impaired[,]" such that Defendant's ability to fully defend this action had been "irreparably compromised" and "any sanction short of dismissal would be wholly inadequate." Again, we disagree.

As we indicated above, at the time of Plaintiff's injury by accident, Rule 613(2)(c) provided that, when a plaintiff had not requested a hearing "within two years of the filing of an Order of Removal requested by the plaintiff . . . and not pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the [Commission] on its own motion or by motion of any party." Workers' Comp. R. of N.C. Indus. Comm'n 613(2)(c), 2003 Ann. R. (N.C.) 842. At this same time, Rule 613(1)(c) — which concerned voluntary dismissals, rather than removals — similarly provided that, "[u]pon proper notice and an opportunity to be heard, any claim may be dismissed with or without prejudice by the [Commission] on its own motion or by motion of any party for failure to prosecute or to comply with these Rules or any Order of the Commission." Workers' Comp. R. of

N.C. Indus. Comm'n 613(1)(c), 2003 Ann. R. (N.C.) 842. Further, our Court has previously determined that the Commission must make findings of fact concerning the following factors before dismissing a case pursuant to Rule 613(1): "'(1) whether the plaintiff acted in a manner which deliberately or unreasonably delayed the matter; (2) the amount of prejudice, if any, to the defendant [caused by the plaintiff's failure to prosecute]; and (3) the reason, if one exists, that sanctions short of dismissal would not suffice.'"[6] *Poole*, __ N.C. App. at __, 762 S.E.2d at 229 (alteration in original) (quoting *Lee v. Roses*, 162 N.C. App. 129, 132–33, 590 S.E.2d 404, 407 (2004)). Because the language of Rules 613(1)(c) and 613(2)(c) similarly concern when the Commission can dismiss a claim with prejudice for "failure to prosecute" and for "not pursu[ing] the claim," respectively, in the present case, we next consider whether there was any competent evidence to support the Commission's findings of fact that supported these factors as the basis for the Commission's conclusion that it had the authority under Rule 613(2)(c) to dismiss Plaintiff's claims with prejudice.

In support of its conclusion that "Plaintiff's claims ha[d] been set for hearing and continued numerous times over a period of almost ten years," and that such delay

[6] Because, at the time this matter was first presented to our Court for consideration, neither the Workers' Compensation Act nor the Commission's Rules "provide[d] further direction as to when a finding of failure to prosecute [wa]s proper and what types of sanctions [we]re appropriate under the circumstances," *Lee*, 162 N.C. App. at 132, 590 S.E.2d at 407, this Court looked to N.C. Gen. Stat. § 1A-1, Rule 41(b) for guidance, since this rule similarly "permit[ted] a defendant in a civil action to move for dismissal when the plaintiff fail[ed] to prosecute his case." *Id.* Thus, we determined that these same factors must be addressed by the trial court before a civil case may be involuntarily dismissed with prejudice for failure to prosecute pursuant to Rule 613(1)(c). *See id.* at 133, 590 S.E.2d at 407.

in prosecuting her claims was "unreasonable," the Commission made the following findings of fact with respect to Plaintiff's actions that caused the proceedings to be delayed between 2004 and 2012:

> 17. On 26 February 2004, Plaintiff filed a Form 33 Request for Hearing which added new claims for physiological and emotional injuries. Plaintiff's claims were placed on the Deputy Commissioner hearing calendar and set for 8 June 2004. At Plaintiff's request, her former attorney . . . withdrew as counsel prior to the hearing date. Plaintiff was granted a continuance in order to retain new counsel. Plaintiff's hearing was continued several more times and was eventually set on [the] Deputy Commissioner['s] December 2004 calendar. Plaintiff failed to appear at the hearing and [the] Deputy Commissioner . . . entered an Order dismissing Plaintiff's claims with prejudice.
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> 19. On 21 November 2005, Plaintiff filed a Motion. for Appropriate Relief requesting that the previous dismissal be vacated. [The] Deputy Commissioner . . . granted Plaintiff's motion in an Order filed 9 January 2006 and Mediation was held on 7 March 2008. [Plaintiff's counsel] withdrew as counsel on 24 April 2008 and Plaintiff's case was set for hearing on 23 September 2009.
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> 20. Plaintiff retained [other counsel] shortly after . . . [Plaintiff's former counsel withdrew]. [Plaintiff's counsel] requested that Plaintiff's claims be removed from the active hearing docket so as to give him a chance to conduct further discovery. This motion was granted by [the] Deputy Commissioner . . . in an Order filed on 17 September 2009.

> 21. Just over three years later, on 21 September 2012, Plaintiff filed another Form 33 Request for Hearing in response to which Defendant filed a Form 33R asserting that Plaintiff's claims were barred by the statute of limitations.

Further, in support of its conclusion that Plaintiff's "failure to prosecute her claims ha[d] resulted in material prejudice to Defendant" by "prevent[ing] Defendant from obtaining relevant medical records, interviewing necessary witnesses and fully investigating Plaintiff's claims of psychological and mental injuries, and alleged related disability," the Commission made the following findings of fact:

> 9. Plaintiff testified that Dr. Carl Foulkes, M.D., a physician at the Ramsey Street Clinic in Fayetteville, was her primary care provider from approximately 1988 until she moved to Greenville in 2004 and treated her for her injuries stemming from the 23 August 2003 workplace incident. Both parties have stipulated that Dr. Foulkes has since retired, closed his medical practice and purged his former patients' files. The [Commission] finds as fact that Dr. Foulkes' records pertaining to Plaintiff's treatment were destroyed and not made available to Defendant following Plaintiff's filing of a Form 33 on 21 September 2012.
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> 10. From 26 September 2003 through May of 2004, Plaintiff sought treatment from Dr. Duke Ellis, Psy.D., an unlicensed psychologist and social worker with Nature's Reflection in Fayetteville, North Carolina. . . .
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> 11. Dr. Ellis further testified that he purged all of Plaintiff's files in 2012 shortly after the expiration of the legal retention period. The [Commission] finds as fact that Dr. Ellis's medical files pertaining to

> Plaintiff's treatment were destroyed and not made available to Defendant following Plaintiff's filing of a Form 33 on 21 September 2012.
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> 12. From 21 October 2003 through 19 February 2004, Plaintiff treated with Dr. Zane Walsh, M.D., a rehabilitation physician at Highland Health of North Carolina in Fayetteville. . . .
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> 13. Dr. Walsh was deposed on 17 September 2013. During his deposition, Dr. Walsh testified that he had no independent recollection of treating Plaintiff for injuries related to the 23 August 2003 incident. Dr. Walsh agreed that his lack of memory was due to the fact that he had not seen Plaintiff in approximately ten years.
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> . . . .
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> 23. Kimberly Kogan (hereinafter "Kogan"), a workers' compensation specialist at Central Regional Hospital testified at the Deputy Commissioner hearing. Kogan testified that she ha[d] handled claims from Defendant's Dorothea Dix facility since 2010 following the closure of the facility and the previous specialist's retirement. Kogan testified that Plaintiff's claim file had been retained and that it did not contain any notes from treatment providers taking Plaintiff out of work. Kogan further testified that the passage of time over the course of Plaintiff's claim had made it difficult to locate witnesses, retrieve necessary documents and investigate Plaintiff's subsequent claims of psychological and mental injuries.

Our review of the voluminous record before us indicates that these findings are supported by competent evidence. While Plaintiff urges our Court to consider additional evidence presented to the Commission that would lead to contrary

findings, under our Workers' Compensation Act, "the Commission is the fact finding body," *Adams*, 349 N.C. at 680, 509 S.E.2d at 413 (internal quotation marks omitted), and is "the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965). Thus, this Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. [Rather, our] duty goes no further than to determine whether the record contains any evidence tending to support the finding." *Id.* "The findings of fact by the [Commission] are conclusive on appeal if supported by *any* competent evidence," *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977) (emphasis added), and such findings are conclusive "even though there be evidence that would support findings to the contrary." *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965) (per curiam). Our Court "may set aside findings of fact only upon the ground they lack evidentiary support." *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274. Accordingly, we conclude that there was competent evidence in the record to support the Commission's findings which in turn supported its conclusion that "relevant medical evidence ha[d] been purged, potential witnesses ha[d] been lost and Defendant's ability to investigate ha[d] been substantially impaired," and that "Defendant suffered material prejudice as a result of Plaintiff's unreasonable failure to timely prosecute her claims."

III.

Finally, Plaintiff asserts the Commission erred by concluding that her claims for additional medical compensation were not timely filed within the two-year statute of limitations set forth in N.C. Gen. Stat. § 97-25.1 and, thus, were barred.

At the time of Plaintiff's injury by accident in 2003,[7] N.C. Gen. Stat. § 97-25.1 provided, in relevant part, that "[t]he right to medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation unless, prior to the expiration of this period, . . . the employee files with the Commission an application for additional medical compensation which is thereafter approved by the Commission[.]" N.C. Gen. Stat. § 97-25.1 (2003). North Carolina's Workers' Compensation Rule 408 directed that an employee "may file a claim with the Industrial Commission for an order pursuant to the terms of N.C. Gen. Stat. § 97-25.1, for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever shall last occur." Workers' Comp. R. of N.C. Indus. Comm'n 408(2), 2003 Ann. R. (N.C.) 830–31. The rule further provided that such a claim "may be made on a Form 18M or by written request to the Industrial Commission,"[8] and that "[t]he filing of this claim

[7] Although we cite to the 2003 edition of the General Statutes, we note that, as of the filing date of this opinion, the statutory language of N.C. Gen. Stat. § 97-25.1 has not been modified since its enactment. *Compare* 1993 N.C. Sess. Laws 394, 399–400, 421–22, ch. 679, §§ 2.5, 11.1(g), *with* N.C. Gen. Stat. § 97-25.1 (2015).

[8] We note that, at the time of Plaintiff's injury by accident and through 2012, Rule 408 provided, as excerpted above, that a plaintiff's claim for additional medical compensation may be made "on a Form 18M or by written request to the Industrial Commission," which filing "toll[ed] the time

tolls the time limit contained in [Rule 408(2)] and in N.C. Gen. Stat. § 97-25.1." *Id.*

Here, Plaintiff does not challenge the Commission's finding that she received her last payment of medical compensation on 22 November 2004, or its conclusions that, while Plaintiff timely filed two Form 33s in October 2005 requesting additional medical compensation, "after several continuances requested by Plaintiff, a hearing was never held and the claim[s] w[ere] removed from the active hearing calendar" at Plaintiff's request in 2009, and that "[m]ore than two years elapsed from the time the claim[s] w[ere] removed from the hearing docket before the most recent Form 33[s] w[ere] filed on 21 September 2012." Rather, Plaintiff argues that she satisfied the requirements of N.C. Gen. Stat. § 97-25.1 based on Plaintiff's insistence that her September 2012 Form 33 filings reinstated her case — presumably in accordance

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limit contained in [Rule 408(2)] and in N.C. Gen. Stat. § 97 25.1." Workers' Comp. R. of N.C. Indus. Comm'n 408(2), 2003 Ann. R. (N.C.) 830–31. We note, however, that this rule has undergone several modifications in the last several years. Beginning in 2013, an application for additional medical compensation could be made "on a Form 18M *Employee's Application for Additional Medical Compensation*, by written request, or by filing a Form 33 *Request that Claim be Assigned for Hearing with the Commission*." Workers' Comp. R. of N.C. Indus. Comm'n 408(a), 2013 Ann. R. (N.C.) 1272. The express statement that filing such an application tolled the time limit set forth in N.C. Gen. Stat. § 97-25.1 (2013) was removed from the rule. In 2014, Rule 408 reverted back to the prior language from 2012 — which was in effect at the time of Plaintiff's injury by accident in the present case — and provided that a plaintiff's claim for additional medical compensation may be made "on a Form 18M or by written request to the Industrial Commission," and expressly stated that such filing "toll[ed] the time limit contained in [Rule 408(2)] and in N.C. Gen. Stat. § 97-25.1." Workers' Comp. R. of N.C. Indus. Comm'n 408(2), 2014 Ann. R. (N.C.) 1286. Beginning in 2015, the language changed again to provide that an application for additional medical compensation could be made "on a Form 18M *Employee's Application for Additional Medical Compensation*, by written request, or by filing a Form 33 *Request that Claim be Assigned for Hearing with the Commission*." Workers' Comp. R. of N.C. Indus. Comm'n 408(a), 2015 Ann. R. (N.C.) 1347–48. The express statement that filing such an application tolled the time limit set forth in N.C. Gen. Stat. § 97-25.1 (2015) was again removed from the rule. This language has remained unchanged in the 2016 printing of the Workers' Compensation Rules. *See* Workers' Comp. R. of N.C. Indus. Comm'n 408(a), 2016 Ann. R. (N.C.) 1375–76.

with Workers' Compensation Rule 613(2) — to "the same position it held in 2009" before she removed the claims from the active hearing docket. Nonetheless, as we indicated in section I above, Plaintiff provides no legal support for her assertion that the mere act of filing the Form 33s in September 2012 "simply reinstated the case back to where it was at the time it was removed from the hearing docket in 2009." Since we have already determined that Rule 613 did not compel or mandate that the Commission reinstate Plaintiff's claims solely on the grounds that Plaintiff filed the Form 33s in 2012, we are not persuaded that Plaintiff satisfied the conditions set forth in N.C. Gen. Stat. § 97-25.1 that tolled the two-year statute of limitations for seeking additional medical compensation. Accordingly, we overrule this issue on appeal.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).