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NO. COA10-49

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

RANFERI D. PEREZ,
Employee,
Plaintiff-Appellant,

v. N.C. Industrial Commission
I.C. No. 440919

STEVEN E. CLARK d/b/a/ YOUNG
BUCK CONSTRUCTION,
Employer,

and

STATE FARM FIRE AND CASUALTY
COMPANY,
Carrier,
Defendants-Appellees.

Appeal by Plaintiff from opinion and award entered 8 October 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 June 2010.

Poisson, Poisson & Bower, PLLC, by E. Stewart Poisson and Fred D. Poisson, Jr., for Plaintiff-Appellant.

Brooks, Stevens & Pope, P.A., by Cathy H. Elkins and Ginny P. Lanier, for Defendants-Appellees.

McGEE, Judge.

Ranferi D. Perez (Plaintiff) was employed by Young Buck Construction (Employer). Plaintiff fell at a construction site while working for Employer on 14 June 2004, and he was impaled on a two-by-four board (the two-by-four). The two-by-four punctured

Plaintiff's perirectal area, crossed his rectum and colon, and then punctured Plaintiff's colon in his pelvic region, behind his bladder. The two-by-four impaled Plaintiff fourteen to sixteen inches, leaving Plaintiff hanging approximately three feet off the ground. Plaintiff received extensive medical treatment, including a colostomy and surgery to repair his rectum. Plaintiff's physician, Dr. James Iglehart (Dr. Iglehart), released Plaintiff on 28 July 2004 to return to light duty work. Plaintiff returned to Dr. Iglehart on 30 August 2004, complaining of lower back pain. Plaintiff underwent a colostomy reversal on 5 November 2004. Dr. Iglehart released Plaintiff to return to work with no restrictions on 16 December 2004. Plaintiff again saw Dr. Iglehart on 29 December 2004, complaining of increased rectal pain and a bloody discharge. Dr. Iglehart wrote Plaintiff out of work. Plaintiff returned to work in a new position as "lead man" on 20 January 2005.

Plaintiff sought treatment for low back pain at an emergency room on 27 June 2006 and was treated by Dr. Michael K. Kaczmarek (Dr. Kaczmarek), an emergency room doctor. Plaintiff continued to have back pain in 2006 and was eventually seen by Dr. Douglas Burch (Dr. Burch), a chiropractor. In 2007, Dr. Robert Elkins (Dr. Elkins), an orthopaedic surgeon, conducted an independent medical evaluation by reviewing Plaintiff's medical records. Plaintiff complained of abdominal pain on 18 January 2008 and sought treatment at an emergency room. A CT scan of Plaintiff's abdomen revealed a small bowel obstruction, and Plaintiff underwent

surgery. In 2008, Plaintiff saw a rehabilitative medicine specialist, Dr. T. Kern Carlton, III (Dr. Carlton), concerning Plaintiff's continued back pain.

Employer filed a Form 19 report of Plaintiff's injury with the Commission on 23 June 2004. Employer also filed a Form 60 admission of Plaintiff's right to compensation for an "[I]njury by accident on 6/14/2004[.]" The form was dated 1 July 2004. After Plaintiff had years of medical treatment, Employer filed a Form 33 dated 30 November 2007, requesting that Plaintiff's claim be assigned for hearing.

A hearing was held before Deputy Commissioner Myra L. Griffin on 14 April 2008. The following witnesses testified at the hearing: Steven Clark (Clark), the president of Employer; Sandra Schuman, a claim representative for State Farm; and Plaintiff, who testified through an interpreter. The deputy commissioner also received the depositions of the following witnesses: Dr. Iglehart, Dr. Kaczmarek, Dr. Burch, Dr. Carlton, and Dr. Elkins. In an opinion and award filed 20 March 2009, the deputy commissioner made findings of fact consistent with the facts set forth above. The deputy commissioner concluded, *inter alia*, that: (1) Plaintiff sustained an "admittedly compensable injury by accident" on 14 June 2004 that caused damage to Plaintiff's anus and abdominal areas; (2) the "evidence of record [was] insufficient to establish that [P]laintiff's current back condition [was] causally related to the June 14, 2004 compensable injury by accident[;]" and (3) Plaintiff had reached maximum medical improvement with respect to his

injuries and was entitled to "receive proper and equitable compensation" for his permanent injuries.

Plaintiff appealed to the Commission, arguing that: (1) Plaintiff had not yet reached maximum medical improvement; and (2) that the deputy commissioner erred in concluding that Plaintiff's back injury was not causally related to Plaintiff's compensable accident. The Commission filed an opinion and award on 8 October 2009, making substantially the same findings of fact and conclusions of law as the deputy commissioner. Plaintiff appeals.

I. Issues Before the Commission

Plaintiff first argues that the Commission erred in "failing to make findings of fact and conclusions of law on the issue of whether Plaintiff suffered a back injury in his 14 June 2004 accident." Specifically, Plaintiff contends that the Commission "skipped over th[at] issue and went straight to the issue of whether Plaintiff's current back condition [was] related to his compensable accident." Plaintiff argues that this omission deprived him of the benefit of a presumption that his back injury was "causally related to his compensable 14 June 2004 accident." We agree.

In *Bolick v. ABF Freight Sys., Inc.*, 188 N.C. App. 294, 654 S.E.2d 793, *disc. review denied* 362 N.C. 355, 661 S.E.2d 242 (2008), our Court held that: "The Full Commission is charged with a duty 'to make detailed findings of fact and conclusions of law with respect to every aspect of the case before it.'" *Id.* at 300, 654 S.E.2d at 797 (citation omitted). We also stated that

"pursuant to N.C. Gen. Stat. § 97-85 . . . , a party requesting review before the Full Commission and filing a Form 44 '[was] entitled to have the full Commission respond to the questions directly raised by [the] appeal.'" *Id.* (citation omitted).

In the present case, the Commission's opinion and award contains the following statement of the issues:

The following were submitted to the Deputy Commissioner as:

ISSUES

. . . .

3. Whether [P]laintiff sustained an injury to his back as the result of his compensable injury by accident on June 14, 2004.

The Commission then made the following pertinent findings of fact:

3. On June 14, 2004, [P]laintiff sustained a compensable injury by accident when he fell, impaling himself on a 2x4, which punctured his perirectal area and crossed the rectum and the very lower part of the colon before puncturing through the colon in the right pelvic region behind the bladder. The 2x4 did not impact the sacrum or any other part of the spine. Plaintiff was impaled some 14 to 16 inches onto the 2x4 so that his feet were still 3 feet off of the ground.
4. Plaintiff was transported by ambulance to NorthEast Medical Center in Concord, North Carolina, where he underwent surgery to repair his rectal laceration and a colostomy, which was performed by Dr. James Iglehart. During the surgery, Dr. Iglehart saw no damage to the spine from the impalement by the 2x4. Plaintiff was discharged from the hospital on June 25, 2004.

. . . .

24. Based on the inconsistent reports of Plaintiff's history of back pain, the Full Commission assigns greater weight to the medical testimony of Dr. Elkins than Dr. Burch on the issue of causation. Thus, the record is insufficient to establish that [P]laintiff's current back condition is causally related to the June 14, 2004 injury by accident.

Finally, the Commission made the following conclusions of law:

1. On June 14, 2004, [P]laintiff sustained an admittedly compensable injury by accident when he was impaled by a 2x4 causing damage to his anus and abdominal areas. N.C. Gen. Stat. §97-2(6).
2. The evidence of record is insufficient to establish that [P]laintiff's current back condition is causally related to the June 14, 2004 compensable injury by accident. Thus, [P]laintiff is not entitled to any benefits under the Act for his back condition. N.C. Gen. Stat. §97-2(6).

In *Bolick*, our Court addressed the plaintiff's contention that the Commission "erred by failing to expressly rule on whether [the] defendant [was] required to reimburse [the] plaintiff for past out-of-pocket medical expenses." *Bolick*, 188 N.C. App. at 300, 654 S.E.2d at 797. We conducted the following analysis in *Bolick*:

While it appears from the emphasis in the Commission's Opinion and Award, which orders defendant to "pay medical expenses, when timely submitted," as well as from its decision not to hold defendant in civil contempt, that the Commission implicitly ruled that plaintiff did not timely submit his request for reimbursement of \$1,965.13 in past out-of-pocket medical expenses, we find that the better approach is to expressly respond to the issues raised by plaintiff's appeal. Therefore, we remand for an explicit ruling as to whether defendant must reimburse plaintiff for past out-of-pocket medical expenses.

Id. (emphasis omitted).

In the case before us, the Commission found that the two-by-four "did not impact the sacrum or any other part of [Plaintiff's] spine." Likewise, the Commission found that Dr. Iglehart saw no damage to Plaintiff's spine from the impalement. Finally, the Commission concluded that "the evidence of record [was] insufficient to establish that [P]laintiff's current back condition [was] causally related to the June 14, 2004 compensable injury by accident." Thus, it appears that the Commission implicitly determined that Plaintiff had not "sustained an injury to his back as the result of his compensable injury by accident on June 14, 2004." However, the Commission's findings and conclusions do not address whether Plaintiff's back was injured during his 14 June 2004 accident. Rather, the findings and conclusions of the Commission address the relationship between Plaintiff's current back condition and the 14 June 2004 accident, which is a separate issue.

We find in the present case, as in *Bolick*, that "the better approach is to expressly respond to the issues raised by plaintiff's appeal." *Id.* A determination of the specific injuries caused by the 14 June 2004 accident is particularly important in the present case because "[w]here a plaintiff's injury has been proven to be compensable, there is a presumption that the additional medical treatment is directly related to the compensable injury." *Perez v. American Airlines/AMR Corp.*, 174 N.C. App. 128, 135, 620 S.E.2d 288, 292 (2005). Thus, in ruling on the

compensability of additional medical treatment, the Commission must weigh the evidence in light of those injuries originally found to be compensable. Therefore, Plaintiff would be entitled to the benefit of such a presumption if his original injury by accident on 14 June 2004 was found to have also caused a compensable injury to Plaintiff's back. We therefore remand to the Commission for an explicit determination of "[w]hether Plaintiff sustained an injury to his back as the result of his compensable injury by accident on June 14, 2004."

II. Causation

Plaintiff also argues that the Commission erred in concluding that his current back condition was not causally related to his 14 June 2004 accident. Because of the likelihood that this issue will repeat itself, we address Plaintiff's argument. Plaintiff contends that the findings of fact on which the Commission based its causation conclusion were not supported by the evidence. Plaintiff, however, identifies only two findings he contends are unsupported by the evidence. We review an opinion and award from the Commission to determine whether the challenged findings of fact are supported by competent evidence, and whether those findings support the Commission's conclusions of law. *Calloway v. Memorial Mission Hosp.*, 137 N.C. App. 480, 484, 528 S.E.2d 397, 400 (2000). Unchallenged findings of fact are binding on appeal. *Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118 (2003).

Plaintiff argues that the Commission failed to consider all the evidence before it, specifically the testimony of Dr. Carlton.

However, reviewing the findings of fact and the record before us, we disagree. The Commission received the deposition of Dr. Carlton into evidence. Attached as an exhibit to Dr. Carlton's deposition was a report made by Dr. Carlton after examining Plaintiff. The Commission made the following relevant finding:

20. On July 16, 2008, [P]laintiff presented to Dr. T. Kern Carlton, an expert in physical medicine and pain rehabilitation for an independent medical evaluation of his back. It was noted that [P]laintiff could not remember when his back pain started. However, when Dr. Carlton questioned [P]laintiff, through an interpreter, about an onset date of June 2006, which correlated to the emergency room visit, [P]laintiff responded affirmatively. Dr. Carlton further questioned [P]laintiff about the onset date, stating that "I explained to him that this would be two years after his injury, and he said that this sounded right." Because [P]laintiff reported a 2-year delay in the onset of his back symptoms from his compensable injury, Dr. Carlton opined that [it] was too difficult to state the accident was the direct cause of his current back condition.

Thus, the Commission did consider Dr. Carlton's deposition. We therefore overrule this argument.

Plaintiff next argues that it was error for the Commission to consider Dr. Kaczmarek's testimony because Dr. Kaczmarek "deferred" on the issue of causation. The Commission made the following pertinent finding of fact:

15. On June 27, 2006, [P]laintiff sought treatment at the emergency room for low back pain, which had increased in severity the day before. Plaintiff, through an interpreter, described his pain as traveling from the left side of

his back down into his left buttock with occasional radiation into his left leg. Plaintiff was unable to point to a definite injury causing his back pain. The emergency room physician, Dr. Michael Kaczmarek, concluded a possible diagnosis of a disc injury or strain. He treated [P]laintiff with steroids and muscle relaxers and recommended an MRI if the pain continued. Dr. Kaczmarek testified that he was not sure and did not know whether the June 14, 2004, workplace injury was the cause of [P]laintiff's then-present low back condition.

During Dr. Kaczmarek's deposition, the following exchange occurred between Dr. Kaczmarek and Employer's attorney:

Q. Doctor, would you defer to an orthopedic surgeon on the issue of causation in this matter?

A. I think I would defer to either an orthopedic or a neurosurgeon.

Plaintiff contends it was error for the Commission to rely on Dr. Kaczmarek's opinion in light of Dr. Kaczmarek's statement that he would defer to an orthopedic or neurosurgeon on the issue of causation. Plaintiff relies on *Bostick v. Kinston-Neuse Corp.*, 145 N.C. App. 102, 549 S.E.2d 558 (2001). In *Bostick*, the plaintiff was treated by two doctors at two different times. *Bostick*, 145 N.C. App. at 109, 549 S.E.2d at 562. The Commission found in *Bostick* that the first doctor opined that the plaintiff's current elbow problems were not causally related to the plaintiff's compensable injury. *Id.* However, our Court's review of the testimony in *Bostick* revealed "that [the first doctor] was not explicitly asked to state an opinion, nor did he, as to the cause of *this* plaintiff's left elbow condition." *Id.* Our Court further

found in *Bostick* that the left elbow condition arose after the first doctor had stopped treating the plaintiff, and that the first doctor testified that he would defer to the second doctor on issues concerning treatment of conditions that arose after the plaintiff began treatment with the second doctor. *Id.*, 549 S.E.2d at 562-63. We therefore held that the Commission's finding giving greater weight to the opinion of the first doctor over the second doctor was error. *Id.* at 109-10, 549 S.E.2d at 563.

These facts are distinguishable from those before us. In the present case, the Commission found that Dr. Kaczmarek testified that he "was not sure and did not know whether the June 14, 2004 workplace injury was the cause of [P]laintiff's then-present low back condition." The opinion and award does not mention Dr. Kaczmarek again, nor does it show that any of the Commission's conclusions are based on Dr. Kaczmarek's uncertainty. Our review of Dr. Kaczmarek's deposition reveals the following question and answer:

Q. And if [Plaintiff] had continued to suffer from that low-back pain for the entire two-year period of time or year and a half period of time following his return to work in January of 2005 up until when you saw him but had had no back pain prior to the fall and the being impaled, would it be more probable than not that the being impaled in the manner that I have described, more probably than not, cause an injury to low back in addition to the gut?

A. I can't say for sure. I don't know.

We find that this is competent evidence to support the Commission's finding that Dr. Kaczmarek "was not sure and did not know whether

the June 14, 2004, workplace injury was the cause of [P]laintiff's then-present low back condition." Because the Commission simply found that Dr. Kaczmarek did not know whether the 14 June 2004 accident was a cause of Plaintiff's back condition, and did not rely on any opinion of Dr. Kaczmarek, we find this argument without merit.

Plaintiff further contends that "the evidence of record establishes that Dr. Elkins' testimony is not competent, and the Commission therefore erred when it stated in its Opinion and Award that it relied upon Dr. Elkins' testimony as opposed to Dr. Burch's testimony on the issue" of causation. Specifically, Plaintiff contends Dr. Elkins' testimony is not competent because Dr. Elkins "never examined Plaintiff, he never took a history from Plaintiff, he never considered any of the extensive testimony that Plaintiff offered at the hearing, and he never considered corroborative evidence of Plaintiff's complaints of back pain from Mr. Clark." The only authority Plaintiff cites in support of his argument is a California Court of Appeals case, *Twentieth Century-Fox Film Corp. v. Workers' Comp. App. Bd.*, 141 Cal. App. 3d 778, 190 Cal. Rptr. 560 (1983). However, Plaintiff cites us to no controlling authority for his contention that Dr. Elkins' testimony is incompetent. Therefore, we do not address Plaintiff's argument.

Plaintiff also argues that the Commission erred in finding that "Plaintiff's complaints of pain were inconsistent[,]" because it "failed to show that it considered Mr. Clark's corroborative testimony about Plaintiff's complaints of pain." In support of

this argument, Plaintiff contends that "the Commission must make definitive findings to indicate that it considered or weighed important testimony[.]" Plaintiff cites *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 486 S.E.2d 252 (1997), and *Weaver v. American National Can Corp.*, 123 N.C. App. 507, 473 S.E.2d 10 (1996). In *Lineback*, our Court held that, when the Commission failed to make "definitive findings to indicate that it considered or weighed" certain testimony, we were bound to conclude that the Commission erroneously disregarded that testimony. *Lineback*, 126 N.C. App. at 681, 486 S.E.2d at 254. Likewise, in *Weaver*, our Court held that it was error for the Commission to make a finding that a witness was not credible without also making a finding showing that it considered corroborating testimony. *Weaver*, 123 N.C. App. at 510-11, 473 S.E.2d at 12.

However, in the case before us, the Commission made the following finding:

23. Based on a review of all the evidence, including lay and expert medical testimony as well as a review of all the medical records, the Full Commission finds that [P]laintiff did not make consistent reports of similar low back pain from the date of the injury until he sought emergency room treatment on June 27, 2006 for increasing back pain, which at that time was radiating down the buttocks and left leg. The back pain for which [P]laintiff sought treatment on June 27, 2006 was different from the pain he reported to Dr. Iglehart and Dr. Walker over several visits within the first year of his incident.

Thus, the Commission made a finding which reflects that it reviewed "all the evidence, including lay and expert medical testimony[.]"

as a part of its review. We note that the evidence before the Commission included the testimony of Clark, as well as Plaintiff's testimony. Therefore, the Commission's finding reflects that it reviewed the testimony of Clark and Plaintiff. Further, the Commission's finding does not indicate that it disbelieved Plaintiff's testimony; rather, the Commission's finding simply reflects that Plaintiff gave inconsistent reports of his back pain. The case before us is therefore distinguishable from *Weaver*, because the Commission did not make a finding that either Clark or Plaintiff was not credible. This argument is without merit.

Next, Plaintiff contends it was error for the Commission "not to make a finding that Plaintiff had pain in his back that would shoot down his left leg from time to time when he returned to work after his accident." For this contention, Plaintiff cites to *Cratt v. Perdue Farms, Inc.*, 102 N.C. App. 336, 401 S.E.2d 771 (1991). Plaintiff contends that *Cratt* stands for the proposition that "it is error for the Commission to find that [a] [p]laintiff did not have significant pain where he testified he did." Our reading of *Cratt* differs slightly from Plaintiff's interpretation. In *Cratt*, our Court found no competent evidence to support the Commission's finding that "'the plaintiff is suffering no significant back or leg discomfort.'" *Cratt*, 102 N.C. App. at 338, 401 S.E.2d at 773. We wrote that

our review finds evidence which shows that plaintiff is continuing to experience severe back and leg discomfort any time he attempts to become normally active, and that this condition is at least partially attributable to the injury plaintiff sustained. Whether

the evidence in the record is sufficient to support a finding that plaintiff is totally and permanently disabled within the meaning of G.S. 97-29 is yet to be determined.

Id. We remanded "to the Industrial Commission to make findings from the evidence sufficiently definitive to determine the question of whether the plaintiff is entitled to benefits under G.S. 97-29."

Id. Thus, *Cratt* simply reflects the application of the appropriate standard of review that findings of fact must be supported by competent evidence; we do not view *Cratt* as supportive of Plaintiff's contention that the Commission must make a finding as to every fact to which a plaintiff testifies. In the case before us, the Commission found that Plaintiff made inconsistent statements regarding his back pain. Our review of the record finds competent evidence to support this finding of fact and we therefore overrule this argument.

III. Lifetime Benefits

Plaintiff also argues that the Commission erred by failing to award him lifetime medical benefits. Specifically, Plaintiff contends that: "Finding of Fact 28 does not support Conclusion of Law 10." Finding of fact number twenty-eight states:

28. Dr. Iglehart testified that the fact that [P]laintiff has had one bowel obstruction makes him more likely to have another one, and that [P]laintiff may need further care at that point. However, Dr. Iglehart testified that there is no need for further surgery on [P]laintiff's colon. The Full Commission finds Dr. Iglehart's testimony on this matter to be credible.

Likewise, conclusion of law number ten states as follows:

10. Plaintiff has not shown he has a "substantial risk" of needing further medical treatment due to his compensable injury. Therefore, [P]laintiff is not entitled to lifetime medical benefits at this time. N.C. Gen. Stat. §97-25.1.

Plaintiff contends that Dr. Iglehart's testimony "means that Dr. Iglehart believes that Plaintiff will need medical treatment for events such as the bowel obstructions[.]"

Plaintiff relies on *Adams v. Frit Car, Inc.*, 185 N.C. App. 714, 649 S.E.2d 651 (2007), and argues that "where the medical expert testified that it was likely that the injured worker would need future medical care, then an order for future medical treatment. . . is appropriate." In *Adams*, the employer challenged the Commission's award of future medical benefits to the plaintiff. *Adams*, 185 N.C. App. at 720, 649 S.E.2d at 655. Reviewing the findings, we noted that the Commission "did not find that a total knee replacement would definitely be necessary, or that there [was] even a 'substantial risk' of a need for such surgery." *Id.* Instead, the Commission found "that '[a]s a result of his knee injury, [the plaintiff] will require future medical treatment including a possible total knee replacement.'" *Id.* (Emphasis omitted). We determined that, in light of the depositions of the doctors involved, the Commission had sufficient evidence to support its findings of fact and conclusions of law, and we "refuse[d] to reweigh the evidence before us[.]" *Id.* at 720-21, 649 S.E.2d at 655.

Thus, the Commission's award of lifetime medical benefits in *Adams* was based on its finding that "'[the plaintiff] will require

future medical treatment including a possible total knee replacement.'" *Id.* at 720, 649 S.E.2d at 655 (emphasis added). In the case before us, the Commission found that "Dr. Iglehart testified that the fact that [P]laintiff has had one bowel obstruction makes him more likely to have another one, and that [P]laintiff may need further care at that point. However, Dr. Iglehart testified that there is no need for further surgery on [P]laintiff's colon." Plaintiff does not challenge this finding of fact and it is therefore binding on appeal. *Johnson*, 157 N.C. App. at 180, 579 S.E.2d at 118. We also note the following deposition testimony of Dr. Iglehart: "I think in terms of a day-to-day basis, he will still have continued anal problems. He has the possibility of another bowel obstruction. But, in terms of any other specific treatment that he needs for these conditions, I don't think he would benefit from any further treatment."

We find the findings of fact and the underlying testimony in the case before us distinguishable from those in *Adams*. Specifically, the Commission found in *Adams* that the plaintiff "will require future medical treatment[.]" *Adams*, 185 N.C. App. at 720, 649 S.E.2d at 655. The only uncertainty was the type of treatment. *Id.* In the present case, the Commission found that Plaintiff "[was] more likely" to experience another bowel obstruction, and "[might] need" further medical treatment. Dr. Iglehart also testified that any further medical treatment would likely not benefit Plaintiff. We find that, as to the bowel obstruction, the Commission's unchallenged finding of fact supports

its conclusion of law that Plaintiff "has not shown he has a 'substantial risk' of needing further medical treatment due to his compensable injury." However, as this conclusion of law applies to Plaintiff's "compensable injury," we instruct the Commission to reconsider its award of lifetime benefits should it find that Plaintiff did in fact sustain an injury to his back as a result of his compensable injury by accident on 14 June 2004.

IV. N.C. Gen. Stat. § 97-31 Award

Plaintiff also contends the Commission erred by granting him an award under N.C. Gen. Stat. § 97-31. The Commission made the following pertinent conclusion in its opinion and award:

5. Plaintiff has reached maximum medical improvement with respect to the injuries he sustained as a result of his compensable injury by accident. As a result, [P]laintiff is entitled to receive proper and equitable compensation for permanent injuries to his important internal and external organs. N.C. Gen. Stat. §97-31(24).

This conclusion of law relates to Plaintiff's "compensable injury." As discussed above, we remand this case to the Commission to make explicit findings concerning whether Plaintiff sustained an injury to his back as a result of his compensable injury by accident on 14 June 2004. Therefore, the specific injuries which may be deemed by the Commission to be "compensable" might change. As with the issue of lifetime medical benefits, if the Commission finds that Plaintiff sustained an injury to his back as a result of his compensable injury by accident on 14 June 2004, it must reconsider Plaintiff's award pursuant to N.C.G.S. § 97-31. We therefore

reverse the Commission's opinion and award and remand for reconsideration in light of further findings as ordered above.

Plaintiff also contends it was error for the Commission to fail "to award Plaintiff compensation for the damage to the abdominal musculature." As this issue is likely to arise again on remand, we address Plaintiff's contention. Plaintiff contends that the Commission's award under N.C.G.S. § 97-31(24) does not address additional permanent injuries identified by the evidence. Specifically, Plaintiff argues that the Commission failed to address "the permanent injury that Dr. Iglehart identified to the musculature of Plaintiff's abdomen." Plaintiff argues that the "award for the skin/underlying tissue did not encompass an award for the musculature because the complications from the skin/tissue damage are adhesions, whereas the complication from the damage to the musculature is hernia." We disagree.

The opinion and award contains the following finding of fact:

26. To repair the area impaled by the 2x4, Dr. Iglehart needed to cut the peritoneum, which is the outside layer of the colon and the outside layering of the musculature of the abdominal cavity. This area is now weaker and hernias may develop due to the weakened state of the peritoneum. As a result of his compensable injury of June 14, 2004, [P]laintiff has sustained permanent injury to his peritoneum.

Thus, the Commission did address damage to the "outside layering of the musculature of the abdominal cavity[,]" as well as the risk of hernia, when it made findings about the injury to Plaintiff's peritoneum. The Commission awarded Plaintiff \$10,000.00 for

permanent injury to his peritoneum, providing an award for injury to the musculature of Plaintiff's abdominal cavity. This argument is without merit.

Reversed and remanded.

Judges STROUD and ERVIN concur.

Report per Rule 30(e).