NO. COA10-811

NORTH CAROLINA COURT OF APPEALS

Filed: 17 May 2011

DARLENE J. LOCKARD
Employee-Plaintiff,

v.

North Carolina
Industrial Commission
I.C. File Number: 785930

CHAPEL HILL REHABILITATION CENTER
Employer-Defendant,

and

SEDGWICK CLAIMS SERVICES
Carrier-Defendant.

Appeal by Plaintiff from an opinion and award filed 26 March 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 December 2010.

Brumbaugh, Mu & King, P.A., by Angela D. Vandivier-Stanley for Plaintiff-Appellant.

McAngus, Goudelock & Courie, P.L.L.C., by H. George Kurani and Daniel L. McCullough for Defendant-Appellees.

BEASLEY, Judge.

Plaintiff appeals from the North Carolina Industrial Commission's determination that her hip condition was not causally related to her compensable work injury, that she constructively

refused suitable employment following her injury, and that she was no longer entitled to compensation following her refusal. Because the Commission's findings of fact are supported by competent evidence, and those findings support the Commission's conclusions of law, we affirm the Industrial Commission's order.

Plaintiff, Darlene J. Lockard, was employed as a nurse for Defendant, Chapel Hill Rehabilitation Center. On 29 June 2007, Plaintiff experienced pain in her lower back and right leg after assisting another nurse in lifting a patient that had fallen to the floor. On 6 July 2007, Plaintiff presented to her primary care physician, Dr. James G. Wallace, Jr. (Dr. Wallace), complaining of lower back pain and right hip pain. Following a physical examination, Dr. Wallace "diagnosed [P]laintiff with low back pain and sciatica. [Dr. Wallace] prescribed pain medication and physical therapy, and [P]laintiff was advised to return for follow-up care in one week." Additionally, Defendant directed Plaintiff to present to Dr. Jennifer Swanson (Dr. Swanson) at Concerta Medical Centers. Later, at his deposition, Dr. Wallace would explain that he believed that Plaintiff's right hip pain arose as a result of her 29 June 2007 accident.

Plaintiff met with Dr. Swanson on 9 July 2007. Dr. Swanson had previously treated Plaintiff for a "back injury to her lumbar region" in May 2006. During her 2007 visit to Dr. Swanson, Plaintiff

complained of pain in her right hip and lower back. Dr. Swanson ordered x-rays which revealed "mild degenerative changes at L5-S1 and significant degenerative joint disease with loss of joint space in the right hip." "Dr. Swanson diagnosed Plaintiff with a lumbar strain and right hip pain." Dr. Swanson also determined that she could not attribute Plaintiff's hip pain to the 29 June 2007 incident. Because "Dr. Swanson did not relate [P]laintiff's hip condition to the compensable work-related injury, she referred [P]laintiff to her primary care physician or orthopedist for treatment of her hip."

On 13 July 2007, Plaintiff returned to Dr. Wallace again complaining of "low[er] back pain [and] right leg pain." After ordering x-rays, Dr. Wallace opined that Plaintiff had lumbar and right sacral radiculopathy. However, Dr. Wallace did not diagnose Plaintiff with a condition in her right hip. "Dr. Wallace referred Plaintiff to UNC Orthopedics for further treatment for her continued 'SI joint injection/sciatica' without any mention of ongoing hip pain."

On 2 August 2007, Dr. Wallace noted that Plaintiff appeared to be making progress in physical therapy and ordered her to continue attending the sessions for an additional four weeks. Shortly thereafter, Plaintiff returned to work in a data entry position. However, Plaintiff's new data entry position also included several responsibilities from her prior nursing job. Plaintiff returned to Dr. Swanson's office three more times. On Plaintiff's final visit,

Dr. Swanson examined Plaintiff's hip and noted a normal range of motion. Further, Dr. Swanson found that there appeared to be no tenderness in Plaintiff's right hip.

Acting upon the earlier referral of Dr. Wallace, Plaintiff sought treatment at Triangle Orthopaedic Associates on 13 September 2007. Plaintiff was examined by Dr. Andrew K. Lynch (Dr. Lynch). Plaintiff complained of lower back pain and explained that she no longer felt pain in her right hip. Dr. Lynch diagnosed Plaintiff with "[s]ubacute low back pain related to a work-related injury, right hip degenerative joint disease, the symptoms of which had resolved, and morbid obesity." Following several procedures to improve Plaintiff's lower back condition, Dr. Lynch "placed [P]laintiff at maximum medical improvement" and assigned her to a number of permanent work restrictions. Later, on 25 July 2008, Plaintiff's care was transferred from Dr. Lynch to Dr. Eugenia F. Zimmerman (Dr. Zimmerman).

Dr. Zimmerman continued Plaintiff's treatment for lower back pain but never treated her for right hip pain. After a number of adjustments, Plaintiff was assigned a number of permanent work restrictions limiting her working hours to no more than "32 hours per week, no lifting over 20 pounds, alternating between standing and sitting, and no walking over 100 feet." At this time, Plaintiff

ceased any duties associated with her prior nursing position and focused solely on data entry.

In her data entry position, Plaintiff was primarily responsible for completing medication sheets, treatment sheets, and physician orders. John McGregor (McGregor) was retained by Defendant, Sedgwick Claims Management Services, as a vocational rehabilitation specialist. McGregor was tasked with determining whether Plaintiff's data entry position was suitable employment as defined by the Workers' Compensation Act. To make his determination as to the suitability of Plaintiff's employment, McGregor "met with [P]laintiff and representatives of [Defendant], toured [Defendant's] health facility and observed [P]laintiff performing her modified duties." In his initial report completed on 10 November 2008, McGregor found that Plaintiff's data entry position was not suitable employment. McGregor based his opinion on the following facts: "(1) [P]lainiff was earning her pre-injury wage of $25.73 per hour, which was significantly higher than the average salary of a data entry clerk of $15.00 per hour; (2) [Plaintiff's] position was a combination of two jobs; and (3) [Plaintiff's] position was not available in the competitive labor market."

After listening to testimony of Plaintiff at the 13 November 2008 hearing of the Deputy Commissioner, McGregor decided to revisit the findings that he made in his initial report. During his second

inquiry, McGregor learned that Plaintiff was no longer responsible for any of her prior nursing responsibilities and that Plaintiff's data entry position was a necessary job with the Defendant health care facility. Following his second investigation, McGregor determined that Plaintiff's data entry position was suitable employment. In December 2008, Plaintiff began to experience a number of difficulties performing her duties in the data entry position. Specifically, Plaintiff's supervisor observed that she was having trouble "making timely changes to . . . patient charts" and committing errors in data entry. In March 2009, Plaintiff was suspended indefinitely pending an investigation into the alleged errors.

On 13 November 2008, Plaintiff's claim for benefits was heard by Deputy Commissioner J. Brad Donovan. On 3 September 2009, Deputy Commissioner Donovan issued an order in which he concluded that Plaintiff's back injury was a compensable work injury. However, the Deputy Commissioner also concluded that Plaintiff's hip condition was not related to her compensable work injury, that Plaintiff was provided with suitable employment following her injury, Plaintiff constructively refused suitable employment, and that Plaintiff should be denied any further benefits following her refusal. By order filed on 26 March 2010, the Full Industrial Commission reaffirmed the Deputy Commissioner's order. Plaintiff appeals the

decision of the Full Commission arguing that the Industrial Commission erroneously determined that: (I) Plaintiff's hip condition was not causally related to her compensable work injury; (II) Plaintiff constructively refused suitable employment; and (III) Plaintiff is no longer entitled to workers' compensation benefits.

Standard of Review

It is well established that "[t]he Industrial Commission and the appellate courts have distinct responsibilities when reviewing workers' compensation claims." *Billings v. General Parts, Inc.*, 187 N.C. App. 580, 584, 654 S.E.2d 254, 257 (2007). The Commission acts as a fact finding body and is tasked with judging witness credibility and assigning weight to witness testimony. *Gore v. Myrtle/Mueller*, 362 N.C. 27, 40-41, 653 S.E.2d 400, 409 (2007). On appeal, "appellate courts must examine 'whether any competent evidence supports the Commission's findings of fact and whether [those] findings . . . support the Commission's conclusions of law.'" *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 700 (2004) (quoting *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000)). The Commission's conclusions of law will be reviewed *de novo* on appeal. *Id.*

Findings of fact will be set aside only where there is a complete lack of competent evidence. *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 914 (2000). However, those findings of

fact that are unchallenged on appeal are binding. *Estate of Gainey v. Southern Flooring & Acoustical Co.*, 184 N.C. App. 497, 501, 646 S.E.2d 604, 607 (2007). Additionally, "[w]hen the Commission acts under a misapprehension of the law, the award must be set aside and the case remanded for a new determination using the correct legal standard." *Ballenger v. ITT Grinnell Industrial Piping*, 320 N.C. 155, 158, 357 S.E.2d 683, 685 (1987).

I.

Plaintiff first argues that the Industrial Commission's determination that she failed to establish that her right hip condition is causally related to her compensable work injury was not based on competent evidence in the record, was not supported by the Commission's findings of fact, and was based upon a misapprehension of the applicable law. We disagree.

To establish the existence of an injury compensable under the Workers' Compensation Act the claimant must show: "(1) [t]hat the injury was caused by an accident; (2) that the injury arose out of the employment; and (3) that the injury was sustained in the course of employment." *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 402, 233 S.E.2d 529, 531 (1977); N.C. Gen. Stat. § 97-2(6) (2009). The "arising out of" element requires proof that the claimant's injury was the result of a risk related to the claimant's employment. *Billings*, 187 N.C. App. at 586, 654 S.E.2d at 258.

"[W]here the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Click v. Freight Carriers*, 300 N.C. 164, 167, 265 S.E.2d 389, 391 (1980). "The Commission is entitled, however, to give greater weight to the testimony of some doctors over others." *Perkins v. U.S. Airways*, 177 N.C. App. 205, 211, 628 S.E.2d 402, 406 (2006). The Industrial Commission may give less weight to the testimony of a medical expert if they determine that the expert's opinion is based upon an inaccurate account of the facts surrounding the injury. *See Sheehan v. Perry M. Alexander Const. Co.*, 150 N.C. App. 506, 514-15, 563 S.E.2d 300, 305 (2002).

In this case, Plaintiff challenges the validity of several findings of fact in which the Industrial Commission relied on the expert testimony of Dr. Swanson and found that Plaintiff's right hip condition was not causally related to her compensable work injury. In its order the Full Industrial Commission made the following findings of fact:

> 11. Given the degree of arthritic changes in [P]laintiff's right hip and that [P]laintiff's complaints of pain were concentrated in the joint rather than in the muscle, Dr. Swanson opined that [P]laintiff's hip condition was not causally related to the 29 June 2007 accident. Dr. Swanson further opined that the 29 June 2007

> incident did not materially aggravate [P]laintiff's pre-existing degenerative joint disease. Dr. Swanson specifically opined that she did not interpret her findings to indicate that the 29 June 2007 accident brought about pain in [P]laintiff's right hip.
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> 12. Dr. Wallace opined that [P]laintiff's right hip pain in July 2007 was caused by the 29 June 2007 accident. He testified that this opinion was based in part on [P]laintiff's report of having no back or hip pain prior to the 29 June 2007 accident.
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> 13. Given the greater experience of Dr. Swanson, her prior treatment of [P]laintiff for earlier back problems, and her technical explanation of the separation of the two conditions suffered by [P]laintiff, the undersigned give greater weight to Dr. Swanson's opinion regarding the relationship between [P]laintiff's hip condition and the compensable injury of 29 June 2007, over that of Dr. Wallace, whose diagnosis was based primarily upon his reliance on the premise that [P]laintiff was not hurting prior to the date of injury so it must be causally related.

Based on these findings and several others, the trial court concluded that:

> 1. Plaintiff sustained an injury by specific traumatic incident of the work assigned on 29 June 2007, resulting in an injury to her lower back. N.C. Gen. Stat. § 97-2(6).
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> . . . .
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> 3. Plaintiff's hip condition has not been shown to be causally connected to the compensable injury, and plaintiff is not entitled to indemnity or medical benefits as a result of that condition. N.C. Gen. Stat. § 97-2(6).

The Industrial Commission's findings of fact are supported by competent evidence in the record and those findings support its conclusions of law. At her deposition, Dr. Swanson stated that Plaintiff's hip pain was not likely caused by the 29 June 2007 accident. In contrast, Dr. Wallace came to the opposite conclusion and found that Plaintiff's hip pain was a direct result of her work injury. Dr. Wallace further explained that he relied on the medical history provided to him by Plaintiff in reaching his conclusion. However, Dr. Wallace was unaware of Plaintiff's prior back injury before opining that Plaintiff's hip condition was caused by her 29 June 2007 injury.

Dr. Wallace's expert opinion was based on Plaintiff's inaccurate account of her relevant medical history. Because Dr. Wallace's expert testimony was based upon evidence that was later shown to lack credibility, the Industrial Commission appropriately gave greater weight to the expert testimony of Dr. Swanson. The expert opinion of Dr. Swanson supports the Industrial Commission's conclusion that Plaintiff's hip condition was not related to her work injury. Because there is competent evidence to support the Industrial Commission's findings of fact and those findings support the Commission's conclusions of law, Plaintiff's first argument on appeal is without merit.

II.

In her second argument, Plaintiff contends that the Industrial Commission's determination that she refused suitable employment was not based on competent evidence in the record, was not supported by the Commission's findings of fact, and was a misapprehension of the applicable law. We disagree.

"If an injured employee refuses employment procured for him suitable to his capacity he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified." N.C. Gen. Stat. § 97-32 (2009). This Court has explained that "suitable employment" is "'any job that a claimant is capable of performing considering his age, education, physical limitations, vocational skills and experience.'" *Munns v. Precision Franchising, Inc.*, 196 N.C. App. 315, 317, 674 S.E.2d 430, 433 (2009) (quoting *Shah v. Howard Johnson*, 140 N.C. App. 58, 68, 535 S.E.2d 577, 583 (2000)).

"[A]n employer cannot avoid its duty to pay compensation by offering the employee a position that could not be found elsewhere under normally prevailing market conditions." *Moore v. Concrete Supply Co.*, 149 N.C. App. 381, 389-90, 561 S.E.2d 315, 320 (2002). The rationale behind this rule is that "[i]f an employee has no ability to earn wages competitively, the employee will be left with no income

should the employee's job be terminated." *Peoples v. Cone Mills Corp.*, 316 N.C. 426, 438, 342 S.E.2d 798, 806 (1986). Therefore, if another employer "would not hire the employee with the employee's limitations at a comparable wage level . . . [or] if the proffered employment is so modified because of the employee's limitations that it is not ordinarily available in the competitive job market, the job is make work and is not competitive[, suitable employment.]" *Jenkins v. Easco Aluminum*, 165 N.C. App. 86, 95, 598 S.E.2d 252, 258 (2004) (original citations, internal quotation marks, and brackets omitted).

In this case, the Industrial Commission appropriately determined that Plaintiff's post-accident data entry position was "suitable" employment. In its order, the Industrial Commission made the following findings of fact pertaining to the suitability of Plaintiff's employment:

> 20. Mr. John McGregor was retained as the vocational rehabilitation specialist in this matter. He prepared an initial report on 10 November 2008. In preparation for this report, Mr. McGregor met with [P]laintiff and representatives of defendant-employer, toured defendant-employer's health facility and observed [P]laintiff performing her modified duties. At that time of the observation, [P]laintiff was still performing a combination of duties from her pre-injury job as a nurse and the data entry position. As a result, Mr. McGregor was under the impression that the data entry position was a job created especially for [P]laintiff, which did not exist prior to her

injury. Accordingly, Mr. McGregor found that [P]laintiff's job was not "suitable" employment as defined by the [Workers' Compensation] Act. He based this opinion on (1) that [P]laintiff was earning her pre-injury wage of $25.73 per hour, which was significantly higher than the average salary of a data entry clerk of $15.00 per hour; (2) that the position was a combination of two jobs; and (3) that the position was not available in the competitive labor market.

21. Mr. McGregor attended the 13 November 2008 hearing, and after listening to [P]laintiff's testimony regarding her current work status determined to revisit his earlier opinion. Mr. McGregor returned to defendant-employer's facility on 23 February 2009, and once again observed [P]laintiff performing her work duties. He was informed that [P]laintiff was no longer performing the nursing duties and that the data entry position was in fact a necessary job at defendant-employer's facility which defendant-employer would have to fill if [P]laintiff was not available to work. Based on this information, Mr. McGregor found [P]laintiff's current position as a data entry clerk to be suitable employment as defined by the [Workers' Compensation] Act and specifically that it did not constitute a "make work" position.

22. Mr. McGregor based his change in opinion on the fact that the position was an established one at defendant-employer's facility and that [P]laintiff was no longer performing a combination of duties, but strictly those of a data entry clerk. Although [P]laintiff earns more than the average data entry clerk, Mr. McGregor assigned less weight to this factor because he assumed she would have received promotions and pay increases if she began in this position when starting work for defendant-employer 15 years ago. Furthermore, he noted that [P]laintiff was able to input

> additional information because of her nursing background, which the average data entry clerk does not possess. Finally, Mr. McGregor compared her current opportunity for advancement with her desire to continue working for only two more years before retirement. Since [P]laintiff had indicated that she intends to retire at 62 years old and move to Arkansas, Mr. McGregor found it less important as to whether she would receive promotions in the long-term.
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> 23. Mr. McGregor also opined that there are jobs available within the competitive labor market suitable for [P]laintiff's age, education, work experience, and physical restrictions. Specifically, Mr. McGregor identified five categories of jobs that were suitable for [P]laintiff, including patient appointment clerk, dental office receptionist, data entry operator, nurse case manager, triage nurse, health educator and vocational training (CNA) instructor. With the exception of triage nurse, Mr. McGregor found job openings in [these] areas within [P]laintiff's geographical region. Based on these findings, Mr. McGregor opined that [P]laintiff would be able to find suitable employment within the competitive labor market if she stopped working for defendant-employer. Further, Mr. McGregor opined that [P]laintiff has the capacity to earn her pre-injury wages in the competitive labor market if she chose to pursue other employment.

Because Plaintiff does not raise issue as to the validity of the preceding findings of fact, they are binding on appeal. *Estate of Gainey*, 184 N.C. App. at 501, 646 S.E.2d at 607. The Industrial Commission found that the vocational rehabilitation specialist weighed the nature of Plaintiff's work, the availability of similar positions in the open market, and her desire to retire in two years

in concluding that the data entry position was suitable employment. Though Plaintiff presents contrary evidence indicating that her employment was not suitable, the Industrial Commission's findings are conclusive. *See Effingham v. Kroger Co.*, 149 N.C. App. 105, 109, 561 S.E.2d 287, 291 (2002) ("The Commission's findings of fact are conclusive on appeal if supported by competent evidence, even where there is evidence to support contrary findings."). The trial court's conclusion that Plaintiff's position was suitable employment is supported by the Commission's findings of fact and does not represent a misapplication of the law. We now consider whether the trial court appropriately concluded that Plaintiff constructively refused her suitable employment.

A claimant will be barred from collecting workers' compensation benefits if she either actively or constructively refuses suitable employment. *Workman v. Rutherford Elec. Membership Corp.*, 170 N.C. App. 481, 486, 613 S.E.2d 243, 247 (2005). Raising the constructive refusal defense, an employer will argue that "the employee's inability to earn wages at pre-injury levels is no longer caused by his injury; rather, . . . the employee's [own] misconduct is responsible for his inability to earn wages at pre-injury levels." *Jones v. Modern Chevrolet*, 194 N.C. App. 86, 89, 671 S.E.2d 333, 336 (2008) (internal quotation marks omitted).

However, if an employee who has been provided with rehabilitative employment is terminated from that position for misconduct, the termination "does not automatically constitute a constructive refusal to accept employment so as to bar the employee from receiving benefits for temporary partial or total disability." *Seagroves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 233-34, 472 S.E.2d 397, 401 (1996). "[U]nder the *Seagraves*' test, to bar payment of benefits, an employer must [first] demonstrate . . . that: (1) the employee was terminated for misconduct; (2) the same misconduct would have resulted in the termination of a nondisabled employee; and (3) the termination was unrelated to the employee's compensable injury." *McRae*, 358 N.C. at 493, 597 S.E.2d at 699. "Once the employer makes this showing, the burden shifts to the employee to show that the refusal was justified." *Munns*, 196 N.C. App. at 318, 674 S.E.2d at 433.

In this case, Plaintiff constructively refused suitable employment and is unable to show that such refusal was justified. Theresa Allison (Allison), Plaintiff's supervisor, suspended Plaintiff for untimely data entry on 26 March 2009. Before Plaintiff's suspension, Allison warned Plaintiff that she needed to update patient orders with relevant medical information on a daily basis. Additionally, Allison explained that Plaintiff committed numerous errors in data entry related to the dosage of medication

that patients received, the updating the orders in a timely manner, and how often patients receive the medication. Both Plaintiff and Allison acknowledged that timely and accurate entry of patient medical information was important to the safety and welfare of the patients. The record evidence supports the Industrial Commission's determination that Plaintiff's suspension was for her poor work performance and was unrelated to her injury. Accordingly, there is competent evidence in the record from which the Industrial Commission could infer that Plaintiff refused her suitable employment.

III.

In her final argument on appeal, Plaintiff contends that the trial court erroneously determined that she failed to prove that she was entitled to compensation following her suspension. We disagree.

Once an employer is able to establish that a claimant refused suitable employment, such refusal will usually bar a claimant from obtaining benefits for lost earnings; however, if "the [claimant] . . . show[s] that his or her inability to find or hold other employment of any kind, or other employment at a wage comparable to that earned prior to the injury, is due to the work-related disability[,]" then the claimant is still entitled to "benefits for lost earnings." *Seagroves*, 123 N.C. App. at 234, 472 S.E.2d at 401. "'[D]isability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same

or any other employment. N.C. Gen. Stat. § 97-2(9). Typically, the claimant seeking workers' compensation benefits bears the initial burden of establishing the existence of a disability. *Johnson v. Southern Tire Sales & Serv.*, 358 N.C. 701, 706, 599 S.E.2d 508, 512 (2004). The claimant must prove that:

> "(1) that [she] was incapable after [her] injury of earning the same wages [she] had earned before [her] injury in the same employment, (2) that [she] was incapable after [her] injury of earning the same wages [she] had earned before [her] injury in any other employment, and (3) that [her] incapacity to earn was caused by [her] injury."

Demery v. Perdue Farms, Inc., 143 N.C. App. 259, 264, 545 S.E.2d 485, 490 (2001) (quoting *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595, 290 S.E.2d 682, 683 (1982)). The claimant may meet her burden by producing evidence which indicates that: (1) she is physically or mentally incapable of work employment due to her work-related injury; (2) though the claimant is capable of some work, she has been unable to obtain employment, despite reasonable efforts to do so; (3) despite being capable of obtaining employment, such efforts would be futile due to age, inexperience, or a lack of education; or (4) despite actually obtaining other employment, the wages she receives in the new position are less than those she received prior to the injury. *Russell v. Lowes Product Distribution*, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993) (citation omitted).

In this case, the trial court appropriately concluded that Plaintiff should no longer receive compensation benefits. Plaintiff specifically asserts that there is a presumption of continuing disability in her favor based upon the second and third reasons listed in *Russell*. While we acknowledge that in some limited circumstances a presumption of continuing disability arises in favor of the claimant, none of the listed circumstances are applicable here. *See Johnson*, 358 N.C. at 706, 599 S.E.2d at 512. Plaintiff fails to meet her burden of establishing a disability. In his second vocational report, McGregor found that Plaintiff's work restrictions would not prohibit her from obtaining employment in similar positions located in her area. McGregor further opined that these positions could provide Plaintiff with wages similar to those that she earned before her injury. Additionally, Plaintiff has looked for employment at approximately six different locations following her suspension. The credibility assigned to Plaintiff's efforts to obtain other suitable employment is an inquiry best suited for the industrial commission and will not be disturbed on review. *Gore*, 362 N.C. at 40-41, 653 S.E.2d at 409. Because there is competent evidence in the record to support the Industrial Commission's conclusion as to Plaintiff's disability, we affirm the Industrial Commission's order.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).