NO. COA12-1114
NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2013

MARK TONEY,
Plaintiff

v.

N.C. Industrial Commission,
I.C. File No. W80630

COLONIAL PROPERTIES TRUST, Employer,

and

PHOENIX INSURANCE, Carrier,
Defendants

Appeal by plaintiff from Opinion and Award entered 1 May 2012 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 February 2013.

*Oxner Thomas & Permar, PLLC, by Justin B. Wraight, for Plaintiff-Appellant.*

*Orbock Ruark & Dillard, PC, by Barbara E. Ruark, for Defendants-Appellees.*

ERVIN, Judge.

Plaintiff Mark Toney appeals from an order entered by the Industrial Commission denying his claim for workers' compensation benefits on the grounds that Plaintiff "failed to establish by a preponderance of the competent medical evidence

that a specific traumatic incident occurring on November 3, 2009 caused an aggravation of Plaintiff's long-standing, pre-existing low back condition." On appeal, Plaintiff argues that the Commission erred (1) by requiring him to identify the specific date upon which his injury occurred and insisting that a description of the alleged incident appear in his medical records and (2) by accepting the testimony of two physicians as credible despite gaps in their knowledge concerning Plaintiff's condition and indications that they were biased against Plaintiff. After careful consideration of Plaintiff's challenges to the Commission's order in light of the record and the applicable law, we conclude that the Commission did not impose impermissibly "strict reporting requirements" on Plaintiff, that the Commission did not err by treating the challenged medical testimony as credible, and that the Commission's order should be affirmed.

## I. Background

### A. Substantive Facts

At the time of the hearing held before the Deputy Commissioner concerning this matter, Plaintiff was fifty-five years old and had a GED degree. After a 2001 motor vehicle accident, Plaintiff was diagnosed with chronic low back pain, for which he received medical treatment from at least 2002

through and after 3 November 2009, the date of his alleged work-related injury. The treatment that Plaintiff received for his chronic low back pain included chiropractic care, facet joint injections, epidural steroid injections, epidural steroid blocks, medial branch blocks, and medications. During this period, Plaintiff reported pain levels that varied from 4-5 out of 10 to 7-8 out of 10.

In 2007, Plaintiff began working as a service manager for Defendant Colonial Properties Trust, an entity that owns and maintains rental properties. In the course of his employment with Defendant Colonial Properties, Plaintiff was required to repair electrical, plumbing, and heating systems and to perform tenant-requested maintenance work. In order to perform his job duties properly, Plaintiff was required to lift and carry items weighing more than 100 pounds.

At the hearing held before the Deputy Commissioner, Plaintiff testified that he was moving a washing machine on 3 November 2009 when he felt "a burning sensation in [his] back" and testified that he "hadn't been right since." On 4 November 2009, Plaintiff's treating physician, Dr. Dina Eisinger, wrote him out of work due to back pain. The degree of back pain that Plaintiff reported and the nature of the treatment that he underwent for this pain did not change significantly between 3

November 2009 and the date upon which this matter was heard before the Deputy Commissioner. Subsequently, Defendant Colonial Properties terminated Plaintiff's employment. Plaintiff has not worked since 3 November 2009.

B. Procedural History

On 3 May 2010, Plaintiff filed a Form 18 reporting that he had suffered a compensable work-related injury on 3 November 2009 and seeking the payment of workers' compensation benefits. On 17 June 2010, Defendants filed a Form 61 denying Plaintiff's claim on the grounds that Plaintiff had experienced "no injury by accident to the back rising out of and in the course and scope of his employment." On 28 June 2010, Plaintiff filed a Form 33 requesting that this matter be set for hearing. On 26 August 2010, Defendants filed a Form 33R, in which they disputed Plaintiff's claim to have experienced a work-related injury by accident, and an amended Form 61, in which they stated, in pertinent part, that Defendants "have denied this claim on the grounds that Plaintiff did not suffer a specific traumatic incident or injury by accident during the course and scope of his employment" and noted that "Plaintiff has a lengthy history [of] pre-existing back problems for which he was continuing to treat up to and at the time of his alleged work injury."

Plaintiff's claim was heard before Deputy Commissioner Philip A. Baddour, III, on 18 January 2011. On 24 October 2011, Deputy Commissioner Baddour entered an Opinion and Award denying Plaintiff's claim for workers' compensation benefits on the grounds that Plaintiff had "failed to establish by a preponderance of the credible evidence that a specific traumatic incident on November 3, 2009 caused an aggravation of his pre-existing low back condition." On 25 October 2011, Plaintiff sought review of Deputy Commissioner Baddour's order by the Commission. On 1 May 2012, the Commission, by means of an order entered by Commissioner Linda Cheatham with the concurrence of Commissioners Bernadine S. Ballance and Christopher Scott, affirmed Deputy Commissioner Baddour's decision with minor modifications, denying Plaintiff's claim for workers' compensation benefits on the grounds that Plaintiff had "failed to establish by a preponderance of the competent medical evidence that a specific traumatic incident occurring on November 3, 2009 caused an aggravation of Plaintiff's long-standing, pre-existing low back condition." Plaintiff noted an appeal to this Court from the Commission's order.

## II. Legal Analysis

### A. Standard of Review

"The standard of review in workers' compensation cases has been firmly established by the General Assembly and by numerous decisions of this Court. N.C. [Gen. Stat.] § 97-86 [(2012)]. Under the Workers' Compensation Act, '[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.' Therefore, on appeal from an award of the Industrial Commission, review is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law." *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965), and citing *Adams v. AVX Corp.*, 349 N.C. 676, 680-81, 509 S.E.2d 411, 414 (1998) (other citation omitted)). "[T]he Commission's findings of fact 'are conclusive on appeal when supported by competent evidence, even though there be evidence that would support findings to the contrary.'" *Hassell v. Onslow Cty. Bd. of Educ.*, 362 N.C. 299, 305, 661 S.E.2d 709, 714 (2008) (quoting *Adams*, 349 N.C. at 681, 509 S.E.2d at 414, and citing *Jones v. Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965)). In the event that a particular finding of fact is not challenged as lacking in sufficient evidentiary support, that finding is "presumed to be supported by competent evidence"

and is "conclusively established" for purposes of appellate review. *Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118, *disc. review denied*, 357 N.C. 460, 585 S.E.2d 760 (2003) (internal citation omitted)). "Thus, on appeal, [an appellate court] 'does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 115, 530 S.E.2d 549, 552-53 (2000) (quoting *Anderson*, 265 N.C. at 434, 144 S.E.2d at 274). "The Commission's conclusions of law are[, however,] reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004) (citing *Grantham v. R.G. Barry Corp.*, 127 N.C. App. 529, 534, 491 S.E.2d 678, 681 (1997), *disc. rev. denied*, 347 N.C. 671, 500 S.E.2d 86 (1998)).

B. Specific Traumatic Injury[1]

[1]Although Plaintiff lists twelve "Issues Presented" in his brief, his challenges to the Commission's order revolve around a pair of arguments concerning the lawfulness of the Commission's determination that his back pain was not aggravated by a specific traumatic incident and the Commission's decision to accept the testimony of certain witnesses sponsored by Defendants as credible. As a result, our discussion of Plaintiff's challenge to the Commission's decision will focus upon the issues addressed in the text of Plaintiff's brief rather than upon the "Issues Presented" stated at the beginning of that document.

As an initial matter, Plaintiff argues that the Commission erred by rejecting his "claim that he suffered a compensable specific traumatic incident" as defined in N.C. Gen. Stat. § 97-2(6). In support of this contention, Plaintiff asserts that he "suffered a compensable specific traumatic incident on November 3, 2009 while moving a washing machine at work" and that, "[a]s a result of the workplace injury, Plaintiff is disabled." According to Plaintiff, the Commission erroneously "requir[ed] Plaintiff to prove the incident occurred on November 3, 2009" and "that the incident be specifically explained in the treating physician's medical record." We do not find Plaintiff's argument persuasive.

"'To be compensable under the Workmen's Compensation Act an injury must result from an accident arising out of and in the course of the employment.' 'With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, 'injury by accident' shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident.'" *Hodges v. Equity Grp.*, 164 N.C. App. 339, 342-43, 596 S.E.2d 31, 34 (2004) (quoting *Taylor v. Twin City Club*, 260 N.C. 435, 437, 132 S.E.2d 865, 867 (1963), and N.C. Gen. Stat. § 97-2(6)

[(2012)]). As a result, "the [relevant statutory language] provides two theories on which a back injury claimant can proceed: (1) that claimant was injured by accident; or (2) that the injury arose from a specific traumatic incident." *Fish v. Steelcase, Inc.*, 116 N.C. App. 703, 707, 449 S.E.2d 233, 237 (1994) (citation omitted), *cert. denied*, 339 N.C. 737, 454 S.E.2d 650 (1995). "[T]he use of the words 'specific' and 'incident' means that the trauma or injury must not have developed gradually but must have occurred at a cognizable time. *Bradley v. E.B. Sportswear, Inc.*, 77 N.C. App. 450, 452, 335 S.E.2d 52, 53 (1985). In other words, in order for a back injury to be compensable, it must result from a specific incident, rather than from an inability to work that occurs gradually and is not triggered by a specific traumatic incident:

> . . . When a pre-existing, nondisabling, non-job-related condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment . . . then the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent. . . . On the other hand, when a pre-existing, nondisabling, non-job-related disease or infirmity eventually causes an incapacity for work without any aggravation or acceleration of it by a compensable accident . . . the resulting incapacity so caused is not compensable.

*Morrison v. Burlington Indus.*, 304 N.C. 1, 18, 282 S.E.2d 458, 470 (1981). "[T]he plaintiff must prove that the accident [or specific traumatic incident] was a causal factor by a 'preponderance of the evidence[.]'" *Holley v. ACTS, Inc.*, 357 N.C. 228, 231-32, 581 S.E.2d 750, 752 (2003) (quoting *Ballenger v. ITT Grinnell Industrial Piping*, 320 N.C. 155, 158-59, 357 S.E.2d 683, 685 (1987)).

The Commission rejected Plaintiff's request for an award of workers' compensation benefits based, in part, on a determination that Plaintiff had failed to prove that his inability to work resulted from a "specific traumatic incident." In reaching this conclusion, the Commission made the following findings, which have not been challenged as lacking in adequate evidentiary support and which are, for that reason, binding upon us for purposes of appellate review:

> 3. At the time of his alleged work injury, Plaintiff was suffering from a pre-existing low back condition resulting from a motor vehicle accident which occurred sometime in 2001. Following the motor vehicle accident, Plaintiff was diagnosed with chronic low back pain.
>
> 4. Plaintiff received medical treatment for his chronic low back pain from at least 2002 through the date of his alleged work injury and continuing thereafter. This treatment included chiropractic care, facet joint injections, epidural steroid injections, epidural

steroid blocks, medial branch blocks and medications.

5. . . . . [B]etween 2002 and November 3, 2009, Plaintiff reported pain levels that varied between 4-5 out of 10 to 7-8 out of 10.

6. Plaintiff's medical records do not reflect a period of time between 2002 and 2009 when Plaintiff did not receive medical treatment or pain medication for his back condition.

7. Following his 2001 motor vehicle accident, Plaintiff's medical records show a pattern of his complaints of pain decreasing for a period of weeks to months after receiving injections and then increasing again as the injections began to wear off.

. . . .

9. Plaintiff started treating with Dr. Dina Eisinger of Triangle Orthopaedic Associates on March 22, 2004. Dr. Eisinger is board certified in physical medicine and rehabilitation and pain management. . . .

10. In May 2009, Plaintiff accepted a less physically demanding job with the hope that it would help ease his chronic back pain. At that time, Plaintiff rated his back pain as 7 out of l0 in severity.

11. On June 10, 2009, Plaintiff reported to Dr. Eisinger that working caused his back pain to flare, even at his new, less strenuous job[,] . . . that "something had to be done" about his pain and that he "could not go on like this." . . .

12. In July 2009, Plaintiff underwent an MRI which showed degenerative disc and facet disease of the lumbar spine. . . . On

July 30, 2009, Plaintiff rated his pain as 6 out of 10.

. . . .

14. Plaintiff returned to Dr. Eisinger on October 16, 2009 and reported that his pain had . . . "severely flared since last Friday." Plaintiff rated his pain as a level of 7 out of 10 and further described it as "the worst pain I ever had in my life."

15. On October 22, 2009, Plaintiff was seen by Dr. Eisinger and reported good pain relief. Although he reported that he felt the best he had felt in 8 to 10 years, he rated his pain leve1 6 out of 10, the same pain rating he had reported in July 2009.

16. Despite reports by Plaintiff that he was feeling well on October 22, 2009, Plaintiff continued to be prescribed his usual medications[, including] Oxycodone, oral Prednisone . . ., Ativan, Hydrocodone[] . . . and Benadryl. Plaintiff did not advise his physician that he did not need pain medication.

17. Plaintiff alleges that, on November 3, 2009, he experienced a pop and a burning sensation in his back while moving a washing machine at work, and that "[he] hadn't [sic] been right since." Plaintiff's medical records do not support this testimony, however.

18. Plaintiff retuned to Dr. Eisinger on November 4, 2009, the day after the alleged work injury. At the top of Dr. Eisinger's medical record, it states: "Date of Injury: no injury." Although Dr. Eisinger's medical record mentions that Plaintiff's job duties include moving appliances, it does not contain any mention of an increase in Plaintiff's pain due to a specific incident occurring on November 3,

2009 or any other date, nor does it mention Plaintiff moving a washing machine. Plaintiff reported his pain level was 7 out of 10, the same level he reported in May 2009, and Dr. Eisinger wrote Plaintiff out of work. It was noted that Plaintiff's last injection had worn off, and Plaintiff was again having pain. While Dr. Eisinger noted that Plaintiff was going to file for long-term disability benefits, there is no mention of Plaintiff filing for workers' compensation benefits. Plaintiff's same medications were continued, and no additional diagnostic tests or studies were ordered. Dr. Eisinger also states in the note that Plaintiff was beginning to realize that he could not continue to work in his physically demanding job.

19. Plaintiff returned to see Dr. Eisinger on December 9, 2009 and reported that he had applied for long-term disability benefits.

20. On December 9, 2009, Plaintiff saw Dr. Eisinger[, whose] . . . note from the visit indicates, "[a]pparently the fact that he gets worse when he does his heavy job has made Unum [disability insurance carrier] think that he was claiming that the lumbar DDD was caused by his work, which he certainly was not." Dr. Eisinger went on . . . "to clarify, [Plaintiff's] pain started with a motor vehicle accident[.] . . . Although the low back condition was not caused by his work it renders him unable to do this job."

21. On February 8, 2010, Plaintiff was seen by Dr. David Musante, also of Triangle Orthopaedic Associates, [and] . . . reported that he had been suffering back pain for nine years. Dr. Musante's medical record does not indicate that Plaintiff reported that his back condition was exacerbated by a work incident on November 3, 2009.

. . . .

23. In 2010, Plaintiff continued to undergo injections and treatment with medication.

24. On March 4, 2010, Plaintiff was seen by Dr. Eisinger again. He rated his pain level as 6 out of 10, the same pain level he reported on October 22, 2009, just prior to the alleged work incident.

25. Plaintiff saw Dr. Robert Wilson, also of Triangle Orthopaedic Associates, on August 13, 2010 in order to review alternate pain treatment options. . . .

26. By August 31, 2010, Plaintiff reported to Dr. Eisinger that his pain level was 5 out of 10 with medication, one level lower than the pain level Plaintiff reported prior to the alleged work injury.

27. . . . . Plaintiff saw Dr. Wilson again on September 17, 2010 and reported little, if any, change in his pain[.] . . . Dr. Wilson's impression included "psychosocial factors interfering with physical function with ongoing chronic pain and disability related to same."

28. Plaintiff has not worked since November 3, 2009.

29. Although Dr. Eisinger signed a document prepared by Plaintiff indicating that Plaintiff's condition was aggravated by a specific traumatic incident on November 3, 2009, a reading of her deposition testimony as a whole shows that this opinion is speculative. At one point in her deposition, Dr. Eisinger testified that she believed Plaintiff's increased report of pain on November 4, 2009 was due to the fact that the injection previously given had worn

off, and Plaintiff no longer felt that he could continue to do the type of work he was doing. At another point, Dr. Eisinger testified that the specific incident to which she referred "was a worsening of pain after lifting and installing appliances." She was then asked, "[w]orsening after lifting and installing appliances, was that lifting and installing appliances that he had been doing for several weeks before that?" She responded, "[y]es." Based upon its consideration of Dr. Eisinger's testimony as a whole, the Full Commission finds that Dr. Eisinger's causation opinion pertains to the cumulative effect of Plaintiff's normal job duties, and not [to] a specific traumatic incident, and that any opinion to the contrary would be speculative.

30. Dr. Ralph Maxy is an orthopedic surgeon with Carolina Orthopaedic Specialists who specializes in spinal surgery and who also treats non-surgical back pain. Dr. Maxy noted that Plaintiff's medical records show no change in his condition before or after the alleged November 3, 2009 work injury and opined that the alleged incident on November 3, 2009 "neither caused, aggravated, nor accelerated" Plaintiff's low back condition. . . . Dr. Maxy noted that there were no objective findings that would indicate any significant change in Plaintiff's condition occurred after November 3, 2009.

31. Dr. Frank Rowan is an orthopedic surgeon with Guilford Orthopaedic and Sports Medicine Center. Based on his review of Plaintiff's medical records, Dr. Rowan opined that Plaintiff's back condition was not aggravated, exacerbated, or accelerated in November 2009. Dr. Rowan noted that Dr. Eisinger's treatment records did not mention a discrete injury occurring on November 3, 2009. He further noted that, in light of

> the fact that Plaintiff's pattern of pain medicine usage did not change following the date of his alleged injury and in light of the fact that there is no evidence of a new injury on his MRI or other studies, it is very unlikely that Plaintiff's ability to work was affected by anything that happened between October 2009 and November 2009.
>
> 32. Having reviewed the evidence of record, the Full Commission finds that Plaintiff has failed to establish by a preponderance of the credible evidence that a specific traumatic incident on November 3, 2009 aggravated his long-standing, pre-existing low back condition.

As a result, a careful study of the Commission's unchallenged findings of fact establishes that, (1) as of 3 November 2009, the date upon which Plaintiff alleges that he was injured, Plaintiff had been suffering from chronic low back pain for more than seven years; (2) although Plaintiff was prescribed various medications and received other non-surgical treatments for his back pain from at least 2002 to 2009, these treatments had limited value in controlling his back pain, which remained significant throughout this period; (3) although Plaintiff testified that he experienced a specific traumatic incident on 3 November 2009, his medical records do not indicate that he reported such an incident to his treating physician; (4) the treatment of Plaintiff's chronic low back pain did not materially change after 3 November 2009; and (5) a review of Plaintiff's medical records covering the period of time from

2002 through 2010 does not show any noticeable change in his condition after 3 November 2009. Thus, we conclude that the Commission's unchallenged findings support its determination that Plaintiff had "failed to establish by a preponderance of the competent medical evidence that a specific traumatic incident occurring on November 3, 2009 caused an aggravation of Plaintiff's long-standing, pre-existing low back condition."

In urging us to overturn the Commission's order, Plaintiff asserts that the "Commission erred by requiring Plaintiff to prove the incident occurred on November 3, 2009 and by requiring that the incident be specifically explained in the treating physician's medical record." In support of his contention that the Commission did, in fact, impose such "strict reporting requirements" as a prerequisite for a finding of compensability, Plaintiff cites to an excerpt from Finding of Fact No. 18, in which the Commission stated that:

> Although Dr. Eisinger's medical record mentions that Plaintiff's job duties include moving appliances, it does not contain any mention of an increase in Plaintiff's pain due to a specific incident occurring on November 3, 2009 or any other date, nor does it mention Plaintiff moving a washing machine.

Aside from the fact that Plaintiff has not challenged the accuracy of the information contained in this excerpt from Finding of Fact No. 18 or argued that Dr. Eisinger's records

did, in fact, make reference to a "specific traumatic incident" occurring during Plaintiff's employment with Defendant Colonial Properties, the record contains ample evidence tending to show that Plaintiff did not report the occurrence of a "specific traumatic incident" occurring on 3 November 2009 or at any other time to his physician. Instead, Plaintiff appears to argue that, by noting the absence of any reference to a "specific traumatic incident" or Plaintiff's role in moving washing machines in Dr. Eisinger's records, the Commission was (1) requiring Plaintiff to prove that his injury occurred on a specific date and (2) imposing a requirement that, as a precondition for receiving workers' compensation benefits, Plaintiff's treating physician had to include a description of the specific incident that caused his disability in her records. After carefully reviewing the Commission's findings, however, we conclude that the quoted language constitutes nothing more than a recitation of a portion of the evidence upon which the Commission relied in determining that Plaintiff had failed to prove that any "specific traumatic incident" had ever occurred and does not reflect the imposition of some sort of "strict reporting requirement" as a precondition for a finding of compensability.

In addition, Plaintiff cites *Fish*, 116 N.C. App. at 708, 449 S.E.2d at 237 (holding that, while the "specific traumatic incident" requirement "requires the plaintiff to prove an injury at a cognizable time," "this does not compel the plaintiff to allege the specific hour or day of the injury"), for the proposition that a claimant may be entitled to workers' compensation benefits even if he or she is unable to identify the precise date on which a compensable injury occurred and argues that we should "refuse to impose strict reporting requirements that bar this claim." However, we do not believe that *Fish* provides much assistance in resolving the issues that Plaintiff has raised on appeal. As we have already noted, Plaintiff clearly identified 3 November 2009 as the date upon which his pre-existing back condition was exacerbated as the result of a "specific traumatic incident." For that reason, this case, unlike *Fish*, does not involve any issue stemming from uncertainty about the date upon which Plaintiff was allegedly injured. On the contrary, the crucial issue before the Commission in this case was whether any "specific traumatic incident" had occurred at all. In light of that set of circumstances, the principle enunciated in *Fish* to the effect that the claimant is not required to establish that the "specific traumatic incident" necessary to support a finding of

compensability occurred on any specific date has little bearing on a proper resolution of this case.

Next, Plaintiff argues that the Commission erred "by holding that the fact that Dr. Eisinger's medical record did not detail an increase in pain as a result of the specific traumatic incident of lifting the washing machine" in support of a determination that no "specific traumatic" incident occurred. In reliance on *Beam v. Floyd's Creek Baptist Church*, 99 N.C. App. 767, 769, 394 S.E.2d 191, 192 (1990) (stating that "[t]he fact that claimant did not experience back pain contemporaneously with that incident does not, by itself, justify defendant's decision to contest this claim"), Plaintiff argues that "it is settled law that the onset of back pain does [not] have to be contemporaneous with the specific traumatic incident." Once again, we believe that Plaintiff's argument rests upon a misapprehension of the decision that the Commission actually made. Contrary to Plaintiff's argument, the Commission did not reject Plaintiff's request for workers' compensation benefits because the onset of Plaintiff's pain was not "contemporaneous" with the "specific traumatic incident" that he described in his testimony. Instead, the Commission simply determined that Plaintiff's back pain was chronic in nature and had not been exacerbated by a "specific traumatic incident."

Finally, Plaintiff argues that his "testimony about how his back pain and resulting limitations were exacerbated [was] not credibly rejected by any other contrary evidence," that there "was no evidence that Plaintiff had not been moving washing machines and other appliances," and that the Commission had not made a "finding . . . that Plaintiff was not credible." In the same vein, Plaintiff argues that the evidence establishes the existence of a causal relationship between a "specific traumatic incident" and the aggravation of Plaintiff's back pain and that the Commission "erred in rejecting Dr. Eisinger's opinion and accepting the opinions of the defense physicians" concerning the extent to which Plaintiff had sustained injury to his back as the result of a "specific traumatic incident." Reduced to their essence, however, these arguments are tantamount to a request that we reweigh the evidence, a step that we are not allowed to take under the applicable standard of review. According to well-established North Carolina law, "[t]he Commission is not required to accept the testimony of a witness, even if the testimony is uncontradicted" or "to offer reasons for its credibility determinations." *Hassell*, 362 N.C. at 307, 661 S.E.2d at 715 (citing *Morgan v. Furniture Industries, Inc.*, 2 N.C. App. 126, 127-28, 162 S.E.2d 619, 620 (1968) (internal citation omitted)). Simply put, the fact that the Commission

resolved disputed factual questions in favor of Defendants and against the position espoused by Plaintiff provides no basis for an award of appellate relief. As a result, given that the record supports the Commission's determination that Plaintiff had failed to prove that his back condition was aggravated by a specific traumatic incident and given that the Commission did not impose any impermissible burden on Plaintiff or make any other error of law in the course of making this determination, we conclude that Plaintiff is not entitled to any relief on the basis of these arguments.

C. Testimony of Dr. Maxy and Dr. Rowan

Secondly, Plaintiff argues that the Commission erred by "accepting the opinions of Dr. Rowan and Dr. Maxy as competent expert medical testimony" and urges us to "hold that physician testimony that includes clear bias should not be acceptable as competent expert medical testimony as a matter of law." Once again, we conclude that Plaintiff's argument lacks merit.

As Plaintiff correctly notes, in cases in which "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). As we have already noted, Plaintiff bore the burden of producing competent medical evidence tending to show that any exacerbation of his low back pain stemmed from a "specific traumatic incident." In its order, the Commission found, in pertinent part, that (1) the medical records generated by Dr. Eisinger did not indicate that Plaintiff had ever reported an exacerbation of his pre-existing chronic low back pain resulting from any "specific traumatic incident" or reflect any material change in Plaintiff's condition after 3 November 2009 and that (2) Dr. Maxy and Dr. Rowan had reviewed Plaintiff's medical records and concluded that they did not suggest any significant change in Plaintiff's medical condition after 3 November 2009. Based on the unchallenged findings of fact that it made pertaining to these issues, the Commission concluded that Plaintiff had failed to satisfy his burden of proving that his back pain was affected by any specific traumatic work-related incident.

On appeal, Plaintiff does not argue that the Commission's findings do not support this conclusion or that the Commission's findings lack support in the deposition testimony given by Dr. Maxy and Dr. Rowan. Instead, Plaintiff directs our attention to alleged inaccuracies in the testimony given by these physicians and to the alleged "bias" that they exhibited against Plaintiff

and argues, in essence, that the Commission should not have accepted their testimony as credible while rejecting as speculative certain statements by Dr. Eisinger tending to suggest that Plaintiff's back condition was, in fact, aggravated by a work-related incident. The arguments advanced in support of these assertions amount to a challenge to the Commission's decisions concerning the weight and credibility that should be given to the testimony of Dr. Eisinger, Dr. Maxy, and Dr. Rowan. As we have already established, "[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson*, 265 N.C. at 433-34, 144 S.E.2d at 274. As a result, we conclude that Plaintiff is not entitled to relief from the Commission's order on the basis of these arguments.

## III. Conclusion

Thus, for the reasons set forth above, we conclude that none of Plaintiff's challenges to the Commission's order have merit. As a result, the Commission's order should be, and hereby is, affirmed.

AFFIRMED.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).