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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-525

Filed: 5 June 2018

North Carolina Industrial Commission, I.C. No. X07653

MELESIO RAMIREZ, Employee, Plaintiff,

v.

STUART PIERCE FARMS, INC., Employer, FCCI INSURANCE GROUP, Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 10 April 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 February 2018.

The Bricio Law Firm, P.L.L.C., by Katherine N. Bricio and Francisco J. Bricio, for plaintiff-appellant.

McAngus, Goudelock & Courie, PLLC, by Jack S. Holmes, Emily Anne Smith, and Trula R. Mitchell, for defendant-appellees.

ELMORE, Judge.

Plaintiff Melesio Ramirez appeals from an opinion and award of the Full Commission of the North Carolina Industrial Commission (or "the Commission"), which concluded (I) neither the parties' compromise settlement agreement nor the initial deputy commissioner's order approving the agreement should be set aside, and (II) the subsequent deputy commissioner did not err in granting a nonparty motion

to quash plaintiff's subpoena of the initial deputy commissioner or (III) in ordering that plaintiff's treating physician's deposition be taken at plaintiff's expense.

Because the Commission's findings of fact are supported by competent evidence and those findings in turn support its conclusions of law, we affirm.

Background

Plaintiff is a citizen of Mexico. He was hired by defendant-employer Stuart Pierce Farms, Inc., to perform farm work for the 2010 agricultural season. At all relevant times, defendant-carrier FCCI Insurance Group provided insurance coverage for defendant-employer (collectively, "defendants").

On 19 September 2010, plaintiff suffered a work-related injury by accident to his left ankle. He presented the same day at the emergency room of Roanoke-Chowan Hospital, where a CT scan revealed a dislocation and fractures of the ankle bones.

At the time of his injury, plaintiff was 45 years old and could not read, write, or speak English. He completed the sixth grade in Mexico, served one year in the Mexican military, and thereafter worked exclusively as a farm hand in both Mexico and the United States. Plaintiff's average weekly wage was $537.74.

On 28 September 2010, defendants accepted plaintiff's claim as compensable and initiated payment of temporary total disability compensation to plaintiff at a rate of $358.51 per week. These payments continued through 1 November 2010 for a total of $2,151.06.

On 30 September 2010, Lawrence N. Larabee, Jr., M.D., performed surgery on plaintiff's ankle. Plaintiff continued to treat with Dr. Larabee through 28 October 2010. On that date, Dr. Larabee and his physician's assistant, Karma Kristufek, performed an evaluation and had an extensive discussion with plaintiff, his translator, and his case manager regarding plaintiff's upcoming treatment plan and prognosis. The 28 October 2010 medical record from Dr. Larabee's office (or "the medical record") indicated plaintiff was still on crutches as his ankle was non-weightbearing and in a boot. The medical record also noted plaintiff planned to leave the United States soon due to the expiration of his temporary work visa, and his doctor made suggestions regarding plaintiff's continued treatment in Mexico. "As long as everything [went] as planned" and "assuming there [were] no abnormalities," plaintiff's treatment plan consisted of incremental increases in weightbearing and at least six weeks of physical therapy.

During the evaluation and discussion, plaintiff's case manager inquired as to plaintiff's estimated permanent partial impairment (PPI) rating "assuming all goes well." In response, his doctor first explained there was a chance plaintiff's injury would fail to heal properly and he could "even potentially down the road" develop advanced posttraumatic arthritis, "which could lead to the need for further surgeries, including a possible ankle fusion." Ms. Kristufek memorialized these risks of complications in the medical record and discussed them with plaintiff. While such

complications "would definitely raise" plaintiff's PPI rating, his doctor expected only "some slight limited range of motion and some ongoing pain and swelling after this injury." Thus, he estimated plaintiff's PPI rating as of 28 October 2010 at three-to-five percent.

On 29 October 2010, the parties entered into a compromise settlement agreement (CSA) drafted by Trula Mitchell—an attorney with defense counsel's firm—in which defendants agreed to settle plaintiff's claim for $20,000.00 in exchange for plaintiff releasing all of his rights under the Workers' Compensation Act ("the Act"). Ms. Mitchell is a board certified specialist in workers' compensation law, and her involvement in plaintiff's claim was limited to drafting the CSA, meeting with plaintiff to execute the CSA, and submitting the CSA to the Commission for approval. Plaintiff was not represented by counsel when he executed the CSA, and Ms. Mitchell explained to him that she represented defendants and could not give him legal advice.

The CSA included a summary of the 28 October 2010 medical record from Dr. Larabee's office as well as a provision whereby plaintiff certified that the documents attached to the CSA constituted a full and complete copy of all material medical reports known to exist. Defendants provided plaintiff with an interpreter who reviewed each and every page of the CSA with him, and Ms. Mitchell confirmed with plaintiff that he understood the substance of the CSA; she also encouraged him to

seek legal counsel if he had any questions or concerns. According to Ms. Mitchell, plaintiff appeared jovial and eager to settle his claim, did not ask any questions, and only requested to change the incorrect spelling of his name throughout the CSA; plaintiff's primary concern was that he wished to receive his settlement proceeds by physical check rather than wire transfer. Plaintiff was given a copy of the executed CSA as well as the attached documents that he had certified as a full and complete copy of all known medical reports. Ms. Mitchell submitted the CSA and attached documents to the Commission, and Deputy Commissioner James C. Gillen ("DC Gillen") approved the CSA—"deemed by the Commission to be fair and just, and in the best interest of all parties"—by order entered 2 November 2010. Defendants made a lump sum payment to plaintiff pursuant to the CSA on 9 November 2010, and plaintiff returned to Mexico.

On 3 February 2015—more than four years after entry of DC Gillen's order approving the CSA—plaintiff sought to reopen his claim by filing a Form 33 "Request that Claim be Assigned for Hearing." A hearing was scheduled for 19 August 2015 before Deputy Commissioner Myra L. Griffin ("DC Griffin") to determine *de novo* whether the CSA was fair and just as required by N.C. Gen. Stat. § 97-17(b). In preparation for the hearing, plaintiff requested all documents Ms. Mitchell had attached with her submission of the CSA as well as a copy of the Commission's Bates-stamped file. While defendants' production of documents included the 28 October

2010 medical record from Dr. Larabee's office, the medical record was missing from the Commission's file.

On 11 August 2015, plaintiff served a subpoena on DC Gillen commanding him to appear and testify at the upcoming hearing. Plaintiff asserts on appeal that he sought to question DC Gillen regarding the execution of his duty to undertake a full investigation into the fairness of the CSA prior to its approval. On 17 August 2015, the State—appearing on behalf of the Commission—made a nonparty motion to quash the subpoena, which DC Griffin granted by order entered 18 August 2015.

Following the 19 August 2015 hearing before DC Griffin, the parties were allowed time to take additional deposition testimony and to submit contentions and proposed opinions and awards. DC Griffin granted plaintiff's request to take Dr. Larabee's deposition over defendants' objection. On 21 August 2015, DC Griffin entered an order providing that "[t]he deposition of Dr. Larrabee [sic] shall be taken at Plaintiff's expense." Plaintiff deposed Dr. Larabee on 11 November 2015, and the record was closed on 21 December 2015.

On 24 March 2016, DC Griffin entered an opinion and award concluding that the CSA was fair and just to all parties, and that there was insufficient evidence in the record to indicate error due to fraud, misrepresentation, undue influence, or mutual mistake; thus, neither the CSA nor DC Gillen's order approving it should be set aside. DC Griffin specifically found that the 28 October 2010 medical record from

Dr. Larabee's office, "which may not have been submitted [to the Commission] with the agreement," was accurately summarized in the CSA, and that the medical record itself did not contain any additional information impacting the CSA's fairness. Plaintiff appealed to the Full Commission.

On 10 April 2017, the Full Commission entered an opinion and award affirming the opinion and award of DC Griffin. The Full Commission further concluded that DC Griffin did not err in quashing plaintiff's subpoena of DC Gillen or in ordering that Dr. Larabee's deposition be taken at plaintiff's expense. Plaintiff entered timely notice of appeal.

Discussion

We review an opinion and award of the Commission to determine only "whether any competent evidence supports the Commission's findings of fact and whether the findings of fact support the Commission's conclusions of law." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 116, 530 S.E.2d 549, 553 (2000); N.C. Gen. Stat. § 97-86 (2015). "Thus, on appeal, this Court 'does not have the right to weigh the evidence and decide the issue on the basis of its weight. The [C]ourt's duty goes no further than to determine whether the record contains any evidence tending to support the finding.' " *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)). If the record does contain such evidence, the Commission's findings are

conclusive on appeal, even if there is also evidence that would support contrary findings. *Id.* (citing *Jones v. Myrtle Desk Co.*, 264 N.C. 401, 402, 141 S.E.2d 632, 633 (1965)). "The Commission's conclusions of law are reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004) (citation omitted).

I. The Commission did not err in denying plaintiff's request to set aside the CSA.

Plaintiff first contends the Commission erred in not vacating DC Gillen's 2 November 2010 order approving the CSA because (i) defendants failed to include a material medical report with their submission of the CSA to the Commission, in violation of Industrial Commission Rule 502; (ii) the CSA contained a material misrepresentation regarding plaintiff's potential need for future medical care; and (iii) DC Gillen failed to undertake a full investigation to determine if the CSA was fair and just prior to its approval. According to plaintiff, "[a]ny of these three reasons on their own require that the Order approving the CSA between Defendants and Plaintiff be set aside." Plaintiff ultimately asserts (iv) the Commission should have set aside the CSA itself on the grounds that it was not fair and just.

i. Compliance with Rule 502

Plaintiff insists defendants failed to comply with Rule 502(3)(a) by not submitting the 28 October 2010 medical record from Dr. Larabee's office to the Commission along with the CSA. Plaintiff asserts that Rule 502 does not provide for a summary in lieu of an actual medical report, and that the Commission erred in

finding and concluding that the summary in the CSA was sufficient for compliance with Rule 502. Plaintiff cites to *Kyle v. Holston Grp.*, 188 N.C. App. 686, 656 S.E.2d 667 (2008), for the proposition that failure to comply with Rule 502 requires that any resulting order approving a CSA be set aside.

Rule 502 reads in relevant part:

> (3) No compromise agreement will be considered unless the following additional requirements are met:
>
> (a) The material medical, vocational, and rehabilitation reports known to exist, including but not limited to those pertinent to the employee's future earning capacity, must be submitted with the agreement to the Industrial Commission by the employer, the carrier/administrator, or the attorney for the employer.

4 NCAC 10A.0502(3) (2010).

In *Kyle*, the plaintiff suffered a work-related injury in 2001 and entered into a CSA with the defendants in 2004. 188 N.C. App. at 688–90, 656 S.E.2d at 669–70. Contrary to Rule 502(2)(h), which provides that "[n]o compromise agreement will be approved unless it contains the following language or its equivalent," the CSA submitted in *Kyle* "contained no mention of [the] Plaintiff's age, educational level, past vocational training, or past work experience." *Id.* at 692, 656 S.E.2d at 671. "While [the Commission] requested the required information from the parties and received a reply memo from defense counsel, [the Commission] did not receive a reply from [the] Plaintiff and did not verify with [the] Plaintiff the information contained in defense counsel's memo before approving the Agreement." *Id.* at 693, 656 S.E.2d

at 671. There was also no indication the plaintiff had ever seen defense counsel's memo, and the plaintiff's subsequent testimony contradicted vocational information contained in the memo. Where the CSA itself supported only one conclusion—that is, that the defendants failed to comply with Rule 502(2)(h)—and because, without a response from the plaintiff, the Commission "did not have *all* the information required by Rule 502(2)(h) before approving the Agreement," *id.* (emphasis in original), this Court held that the Commission erred by not setting aside the CSA. *Id*. at 695, 656 S.E.2d at 672.

While the plaintiff in *Kyle* never verified but rather contradicted the information contained in defense counsel's memo to the Commission, the undisputed evidence in the instant case establishes that plaintiff thoroughly reviewed the CSA with an interpreter and Ms. Mitchell prior to signing, and he did not object to the CSA's summary of the medical record. Moreover, unlike in *Kyle*, the evidence of record here is conflicting as to whether or not defendants strictly complied with Rule 502(3)(a). For example, when plaintiff reopened his case and requested all documents defendants had submitted to the Commission along with the CSA, defendants' document production included the medical record. The drafting attorney, Ms. Mitchell, testified to submitting the medical record to the Commission along with the CSA, and the Commission's file contained a letter from Ms. Mitchell verifying that she sent all material medical reports to the Commission. Ms. Mitchell was accepted

as an expert in workers' compensation law and further testified that in her experience, the Commission would contact her office and request any report summarized in a CSA but not included with its submission. DC Gillen did not contact Ms. Mitchell's office; thus, defendants maintain that he must have had the medical record in his possession when he approved the CSA, but that it was subsequently misplaced from the Commission's file.

In its opinion and award, the Commission specifically found that "18. . . . the evidence of record is conflicting regarding whether the medical record from Dr. Larabee's and Ms. Kristufek's 28 October 2010 evaluation of Plaintiff was submitted" along with the CSA. The Commission went on to find

> 19. . . . that, even assuming [DC] Gillen did not have available to him the medical record from Dr. Larabee's and Ms. Kristufek's 28 October 2010 evaluation of Plaintiff, [DC] Gillen had available to him in the [CSA] and the attached medical records sufficient information to determine the rights of the parties, and that the agreement was fair and just.

Additionally, having "found that the information contained in the [CSA] and the attached medical records was sufficient to determine the rights of the parties," the Commission concluded as a matter of law "that the [CSA] approved on 2 November 2010 satisfies the requirements set forth in . . . Rule 502 . . . ."

We conclude that, although the evidence of its submission was conflicting, the Commission's findings as to the medical record and its effect on DC Gillen's order approving the CSA are supported by at least some competent evidence, and the

findings in turn support the Commission's conclusion that the CSA satisfied the requirements of Rule 502. Accordingly, we hold that the Commission did not err in failing to set aside DC Gillen's order approving the CSA based on defendants' alleged noncompliance with Rule 502(3)(a).

ii. Error due to misrepresentation

Plaintiff also contends defendants, in drafting the CSA, made a material misrepresentation to the Commission. Specifically, plaintiff asserts that the CSA's summary of the 28 October 2010 medical record from Dr. Larabee's office misrepresented the significance of his injury and potential need for future medical care. Plaintiff relies on N.C. Gen. Stat. § 97-17(a) to support his argument that because there was error due to misrepresentation, the Commission was required to set aside DC Gillen's order approving the CSA.

N.C. Gen. Stat. § 97-17(a) (2015) sets forth the grounds on which the Commission may set aside a CSA and reads in relevant part:

> No party to any agreement for compensation approved by the Commission shall deny the truth of the matters contained in the settlement agreement, unless the party is able to show to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the Commission may set aside the agreement.

"It is well established that compromise agreements are governed by the legal principles applicable to contracts generally." *Malloy v. Davis Mech., Inc.*, 217 N.C.

App. 549, 553, 720 S.E.2d 739, 742 (2011) (citation, quotation marks, and brackets omitted). The affirmative defense of misrepresentation, whether it be knowingly false (*i.e.*, fraudulent) or negligent, includes two essential elements: "(1) the supplying by the defendant of false information, and (2) reliance on the false statement by the plaintiff." *Vernon v. Steven L. Mabe Builders*, 110 N.C. App. 552, 557, 430 S.E.2d 676, 679 (1993), *rev'd on other grounds*, 336 N.C. 425, 444 S.E.2d 191 (1994) (citations omitted). When a party seeks to rescind an agreement on the basis of misrepresentation, "the burden of proof lies with the moving party." *Smith v. First Choice Servs.*, 158 N.C. App. 244, 250, 580 S.E.2d 743, 748 (2003).

> In such event, the Industrial Commission shall hear the evidence offered by the parties, find the facts with respect thereto, and upon such findings determine whether the agreement was *erroneously executed* due to . . . misrepresentation . . . . If such error is found, the Commission *may* set aside the agreement, G.S. 97-17, and determine whether a further award is justified and, if so, the amount thereof. If not, the case is closed, subject to be reopened for the reasons stated in G.S. 97-47, but not otherwise.

Pruitt v. Knight Publ'g Co., 289 N.C. 254, 260, 221 S.E.2d 355, 359 (1976) (emphasis added); *see also Glenn v. McDonald's*, 109 N.C. App. 45, 49, 425 S.E.2d 727, 730 (1993) ("[W]here there is no finding that the agreement itself was obtained by fraud, misrepresentation, mutual mistake, or undue influence, the Full Commission may not set aside the agreement, once approved.").

Notably, plaintiff in the instant case does not contend he erroneously entered into the CSA based on false information supplied to him by defendants, and there is no evidence in the record to suggest the same. Rather, he seems to argue that DC Gillen erroneously approved the CSA based on misleading information in the CSA's summary of the medical record, which plaintiff himself reviewed and approved prior to its submission. Plaintiff specifically challenges the Commission's finding "18. . . . that the information contained in the medical record, including the potential need for future medical treatment, was accurately summarized in the [CSA]." He argues the CSA's summary, which stated "that if Employee-Plaintiff was not complaint [sic] with his rehabilitation, he could require additional future treatment," misrepresented "the magnitude of the treatment Plaintiff was expected to encounter," including a possible ankle fusion surgery. Other than the plain language of N.C. Gen. Stat. § 97-17(a), plaintiff cites to no legal authority in support of his assertion that "Defendants' misrepresentation to the Industrial Commission required the Industrial Commission to set aside its 2 November 2010 Order approving the CSA." We do not find plaintiff's argument persuasive.

At the time of settlement negotiations, plaintiff was well aware of his treatment plan and prognosis as well as the risks of complications, having met with his treating physician just one day prior to executing the CSA. Plaintiff knew that his doctor expected him to encounter a slightly limited range of motion and some

ongoing pain and swelling associated with his ankle injury, while the need for further surgeries was a more remote possibility. Plaintiff reviewed the CSA with an interpreter and Ms. Mitchell prior to its execution, and he did not object to the CSA's summary of the medical record. Consistent with the medical record, the CSA's summary indicated that plaintiff "*should* have a [PPI] of 3% to 5%" but "*could* require additional future treatment." (Emphasis added.) Thus, like plaintiff, DC Gillen was informed that plaintiff might experience complications from his injury, but he concluded that the CSA was nevertheless fair and just based on the information available at the time.

In addition to its finding that the CSA accurately summarized the medical record, the Commission made the following unchallenged findings of fact:

> 9. Ms. Mitchell advised Plaintiff that she represented Defendants in this claim. Ms. Mitchell did not provide legal advice to Plaintiff during their meeting on 29 October 2010, or at any other time. Ms. Mitchell did not explain Plaintiff's rights to him, and she advised him that, if he had any questions about the [CSA], he needed to retain his own attorney.
>
> 10. An interpreter read each page of the [CSA] to Plaintiff, who indicated his understanding at the end of each page. Plaintiff did not ask any questions about the [CSA] while it was being read to him by the interpreter or afterwards. The only revision Plaintiff requested was to correct the spelling of his name throughout the [CSA].
>
> 11. Plaintiff executed the [CSA] during the meeting on 29 October 2010. He was provided a copy of the executed [CSA], as well as copies of the medical records to be

submitted to the Industrial Commission.

The Commission then found and concluded "that there was no fraud, misrepresentation, undue influence or mutual mistake related to the parties' [CSA] approved on 2 November 2010."

The Commission's findings are supported by competent evidence and in turn support its conclusion that there was no error due to misrepresentation. We also note that even if plaintiff had met his burden of showing such an error, the decision to set aside the CSA remained within the Commission's discretion by operation of the word "may" in N.C. Gen. Stat. § 97-17(a). Thus, plaintiff's contention that the Commission should have set aside DC Gillen's order approving the CSA based on error due to misrepresentation is meritless.

iii. Duty to undertake a full investigation

Plaintiff next contends DC Gillen failed to undertake a full investigation into plaintiff's potential right to continuing medical or total disability compensation prior to approving the CSA. Plaintiff asserts that a review of the 28 October 2010 medical record from Dr. Larabee's office was vital to a determination of his future medical needs, permanent physical restrictions, and potential to return to work, and he maintains that defendants failed to submit the medical record to the Commission along with the CSA. Plaintiff essentially argues that, without the medical record, DC Gillen lacked basic information needed to establish the CSA's fairness. He also

contends DC Gillen failed to verify that plaintiff was knowledgeable about his rights under the Act, again relying on *Kyle* to support his argument that this failure required the Commission to set aside DC Gillen's order approving the CSA.

N.C. Gen. Stat. § 97-17 sets forth the requirements for approval of a settlement between an employee and employer. Our Supreme Court has held that compliance with the statute requires the Commission to undertake a "full investigation" to determine a CSA's fairness "in order to assure that the settlement is in accord with the intent and purpose of the Act that an injured employee receive the disability benefits to which he is entitled[.]" *Vernon v. Steven L. Mabe Builders*, 336 N.C. 425, 432, 444 S.E.2d 191, 195 (1994). "[A]n employee entitled to permanent partial disability benefits under section 97-31 of the Act, but also, because his injuries render him totally and permanently disabled, entitled to permanent total disability benefits under section 97-29, may select the more favorable remedy." *Id.* at 428, 444 S.E.2d at 192. "The presumption is that the Industrial Commission approves compromises only after a full investigation[.]" *Caudill v. Chatham Mfg. Co.*, 258 N.C. 99, 106, 128 S.E.2d 128, 133 (1962).

In *Kyle*, the CSA and attached documents revealed the plaintiff had not been able to return to work in any capacity in the three years and three months since his back injury. 188 N.C. App. at 699, 656 S.E.2d at 675. Additionally, a functional capacity evaluation (FCE) performed one year after his injury "indicated that [the]

Plaintiff's overall level of work capability was light," but that he may not be able to sustain even light-level work for a full eight-hour day. *Id.* Two years after his injury, the plaintiff's doctor assigned him a twenty-five percent PPI rating and recommended further surgery to remove the hardware in his back. "[The] Plaintiff was taking Ambien to help him sleep, Hydrocodone for his pain, and Celebrex and Bextra for inflammation." *Id.* Because this evidence "raise[d] questions as to whether [the] Plaintiff may have been entitled to total disability benefits under N.C. Gen. Stat. § 97-29 instead of benefits under N.C. Gen. Stat. §§ 97-30 or 97-31," this Court held that a full investigation into the CSA's fairness required the deputy commissioner in *Kyle* "to inquire into the possibility that this case was a total disability case." *Id.* at 700, 656 S.E.2d at 675–76. The Court noted that the deputy commissioner could have accomplished this requirement "by seeking to verify with [the] Plaintiff the [vocational] information in defense counsel's memo, particularly given the fact that the memo contain[ed] no indication it had been sent to [the] Plaintiff." *Id.*

"In the instant case it is clear that the parties were contracting with reference to future uncertainties and were taking their chances as to future developments, relapses and complications, or lack thereof." *Caudill*, 258 N.C. at 106, 128 S.E.2d at 133. Unlike in *Kyle*, no permanent restrictions for plaintiff were available in the medical record or elsewhere at the time of settlement negotiations because he was only six weeks removed from his injury, had not completed the healing process, and

had not had a FCE performed. As discussed above, both plaintiff and DC Gillen were aware there could be complications from plaintiff's injury, but nevertheless determined—based on the information available at the time—that the CSA was fair and just under the circumstances. Finally, plaintiff signed the CSA, which included a provision whereby plaintiff certified that he was aware of his rights under the Act and that he voluntarily chose to waive them.

The instant case is distinguishable from *Kyle* in that the facts of plaintiff's claim did not raise any questions as to whether he may have been entitled to total disability benefits under N.C. Gen. Stat. § 97-29 such that further investigation was necessary. Based on information contained in the CSA, including a summary of the medical record, DC Gillen knew plaintiff was a 45-year-old Mexican male with a work history consisting of heavy-duty labor. He knew plaintiff was approximately six weeks removed from an ankle injury that had required surgical repair, that plaintiff had not completed the healing process, and that plaintiff's treating physician had assigned an estimated three-to-five percent PPI rating. There was no indication from the evidence available at the time that plaintiff might qualify for total disability based on his ankle injury. Thus, DC Gillen had all the information he needed to determine the CSA's fairness, and no further investigation was required.

In its opinion and award, the Commission found that "19. . . . [DC] Gillen had available to him in the [CSA] and the attached medical records sufficient information

to determine the rights of the parties, and that the agreement was fair and just." The Commission then concluded:

> 3. The Full Commission has found that the information contained in the [CSA] and the attached medical records was sufficient to determine the rights of the parties and, having so found, concludes that the [CSA] approved on 2 November 2010 satisfies the requirements set forth in N.C. Gen. Stat. § 97-17 and Rule 502, and is fair and just to all parties.

This conclusion is supported by the Commission's findings of fact. The evidence of record shows that DC Gillen reviewed the CSA and its attached documents, was aware of plaintiff's biographical information and his medical prognosis when the CSA was executed, and issued an order expressly concluding that the CSA was fair and just and in the best interest of the parties.

While plaintiff notes that the Commission failed to explicitly find that DC Gillen performed a full investigation, the presumption is that approval comes only after such an investigation and determination that the CSA is fair and just. *See Caudill*, 258 N.C. at 106, 128 S.E.2d at 133. We conclude that plaintiff has not presented evidence sufficient to rebut that presumption here. Accordingly, we hold that the Commission did not err in declining to set aside the CSA due to DC Gillen's alleged failure to undertake a full investigation into the CSA's fairness.

iv. Determination that CSA is fair and just

Plaintiff ultimately asserts the opinion and award lacks findings of fact to support the Commission's conclusion that the CSA is fair and just. He argues that the Full Commission, like DC Gillen, failed to consider plaintiff's potential entitlement to total disability compensation benefits as well as ongoing medical benefits, and that the Commission made no finding of fact to explain how a final settlement in the amount of $20,000.00 was fair and just under the circumstances of plaintiff's claim.

N.C. Gen. Stat. § 97-17(b)(1) (2015) provides that the Commission shall not approve a CSA unless "[t]he settlement agreement is deemed by the Commission to be fair and just[.]"

> We recognize that the fair and just determination is somewhat subjective in nature. Neither the statutory Workers' Compensation Act nor the Workers' Compensation Rules provide a specific procedure or guideline for deciding what is fair and just. While Rule 502 sets forth what must be contained in a compromise agreement, it does not specify how the Commission should go about its fair and just determination. The Commission must necessarily take into account the validity of the plaintiff's claim, despite the fact that the issue of compensability is not before it. In many instances, the amount of the settlement reached reflects how the parties perceive the viability of the plaintiff's claim. The Commission is not blind to this reality, but it must determine for itself whether the settlement is fair and just based on the evidence before it.

Malloy, 217 N.C. App. at 557, 720 S.E.2d at 744.

In its opinion and award, the Commission found "20. . . . based upon the preponderance of the evidence that the [CSA] approved by [DC] Gillen on 2 November 2010 is fair and just and in the best interest of all parties." That evidence included plaintiff's biographical information, vocational history, average weekly wage, medical prognosis, estimated three-to-five percent PPI, and additional factors impacting how the parties valued plaintiff's claim at the time of settlement negotiations. Plaintiff has failed to meet his burden of showing that approval of the CSA as fair and just was not supported by the available evidence. Accordingly, we hold that the Commission did not err in concluding the CSA was fair and just.

II. The Commission did not err in granting the State's nonparty motion to quash the subpoena of DC Gillen.

Plaintiff next argues the Commission should have denied the State's nonparty motion to quash the subpoena of DC Gillen because, according to plaintiff, he was not seeking to establish liability in DC Gillen. Plaintiff contends that he was "merely seeking to obtain DC Gillen's testimony regarding a ministerial function"—specifically, the execution of his duty to undertake a full investigation into the fairness of the CSA. Plaintiff asserts that simply asking a quasi-judicial officer whether he executed a required function is not a probe into the officer's quasi-judicial actions, intentions, or motives, and therefore should have been allowed.

Although the Commission is not a court of general jurisdiction, it is an administrative board with quasi-judicial functions. *See Letterlough v. Atkins*, 258

N.C. 166, 168, 128 S.E.2d 215, 217 (1962). "In approving a settlement agreement the Industrial Commission acts in a judicial capacity and the settlement as approved becomes an award enforceable, if necessary, by a court decree." *Morrison v. Public Serv. Co. of N.C., Inc.*, 182 N.C. App. 707, 709, 643 S.E.2d 58, 60–61 (2007) (quoting *Pruitt*, 289 N.C. at 258, 221 S.E.2d at 358). As a quasi-judicial officer, a deputy commissioner is entitled to immunity for action taken in the exercise of his judicial function. *See, e.g., Royal Oak Concerned Citizens Ass'n v. Brunswick Co.*, 233 N.C. App. 145, 149, 756 S.E.2d 833, 836 (2014). Approving CSAs is an judicial function of a deputy commissioner, and whether a CSA is fair and just is within his or her subjective determination. *Malloy*, 217 N.C. App. at 557, 720 S.E.2d at 744.

In its opinion and award, the Commission labeled the following as an "evidentiary matter":

> Based upon a review of Plaintiff's alleged assignments of error and the record herein, the Full Commission finds and concludes that the Deputy Commissioner did not err in granting the State's Motion to Quash the Subpoena of Deputy Commissioner James C. Gillen . . . . A quasi-judicial officer acting within his discretion is immune from subpoena powers relating to his official duties. *Templeton v. Beard*, 159 N.C. 63, 74 S.E.2d 735 (1912); *Northfield Development Co. v. The City of Burlington*, 136 N.C. App. 272, 281, 523 S.E.2d 743, 749 (2000) (holding that individuals are entitled to quasi-judicial immunity for actions taken in the exercise of their judicial function). Thus, the Full Commission finds and concludes that it was proper for the Deputy Commissioner to quash Plaintiff's subpoena of Deputy Commissioner Gillen to take testimony regarding actions taken in the exercise of his

judicial function . . . .

In his appeal to the Full Commission, plaintiff's alleged assignment of error was that DC Gillen did not perform a full investigation into the CSA's fairness. As discussed above, there is no specific procedure or guideline for deciding what is fair and just under N.C. Gen. Stat. § 97-17(b), and the extent of an investigation into the same is determined—in the deputy commissioner's discretion—on a case-by-case basis. We thus agree with defendants that questioning DC Gillen about his subjective actions is both irrelevant to the Commission's conclusion that the CSA is fair and just as well as impermissible given DC Gillen's status as a quasi-judicial officer performing a judicial function. Accordingly, we conclude that the Commission did not err in granting the State's nonparty motion to quash the subpoena of DC Gillen.

III. The Commission did not err in ordering that Dr. Larabee's deposition be taken at plaintiff's expense.

In his final argument on appeal, plaintiff contends the costs of the post-hearing deposition of Dr. Larabee should have been taxed against defendants pursuant to Industrial Commission Rule 612. Plaintiff argues that assigning this expense to defendants was mandatory and that the Commission lacked discretion to order that Dr. Larabee's deposition be taken at plaintiff's expense.

Rule 612 reads in relevant part: "The employer shall pay for the costs of up to two post-hearing depositions requested by the employee of health care providers who evaluated or treated the employee." 4 NCAC 10A.0612(c) (2010). However, pursuant

to N.C. Gen. Stat. § 97-80 (2015), the Commission has the power to tax costs against the parties—including deposition costs—in its discretion.

As defendants emphasize, Dr. Larabee's testimony was not necessary to the determination of whether the CSA should be set aside pursuant to N.C. Gen. Stat. § 97-17 or Rule 502. Dr. Larabee did not draft the CSA, was not present at the time the CSA was executed, and was not a party to the CSA; thus, his testimony was wholly irrelevant to the issues of defendants' alleged misrepresentation and failure to submit a material medical report to the Commission. Moreover, Dr. Larabee released plaintiff a mere six weeks after his injury on the assumption that plaintiff would continue receiving treatment in Mexico, and Dr. Larabee's notes from plaintiff's final appointment were memorialized in the medical record.

In its opinion and award, the Commission labeled the following as an "evidentiary matter":

> With respect to Plaintiff paying the costs of [ ] Dr. Larabee's deposition, at the hearing before the Deputy Commissioner, the Deputy Commissioner granted Plaintiff's request to depose Dr. Larabee over Defendants' objection at Plaintiff's expense. Plaintiff did not object to the Deputy Commissioner stating that the deposition would be at Plaintiff's expense. Subsequent to the hearing before the Deputy Commissioner, Plaintiff took the deposition testimony of Dr. Larabee with the knowledge that Plaintiff would be responsible to pay the costs of Dr. Larabee's deposition. In its discretion, the Full Commission finds and concludes that the Deputy Commissioner did not err in requiring Plaintiff to pay the costs of Dr. Larabee's deposition.

Because Dr. Larabee's deposition testimony was not necessary to a determination of whether the CSA should be set aside four years after its approval, we conclude that the Commission properly exercised its discretion pursuant to N.C. Gen. Stat. § 97-80 to tax plaintiff with the costs of the deposition. Accordingly, we hold that the Commission did not err in ordering that Dr. Larabee's deposition be taken at plaintiff's expense.

Conclusion

The Commission's findings of fact are supported by competent evidence and in turn support its conclusion that the CSA entered into between the parties in 2010 is fair and just. Plaintiff has failed to meet his burden of proving any grounds to set aside the CSA, either pursuant to N.C. Gen. Stat. § 97-17 or otherwise. For the reasons stated herein, we affirm the opinion and award of the Commission.

AFFIRMED.

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).