NO. COA 13-130
NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2013

WILLIAM D. FERGUSON, JR.,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. X26821

RICHARD CHILDRESS RACING
ENTERPRISES, Employer, and
PACIFIC INDEMNITY COMPANY,
Carrier,
Defendants.

Appeal by plaintiff from opinion and award entered 2 October 2012 by the North Carolina Industrial Commission. Heard in the Court of Appeals 21 May 2013.

Daggett Shuler, Attorneys at Law, by Griffis C. Shuler, for plaintiff-appellant.

Hedrick Gardner Kincheloe & Garofalo, LLP, by Ryan W. Keevan and M. Duane Jones, for defendant-appellees.

HUNTER JR., Robert N., Judge.

William D. Ferguson ("Plaintiff") appeals from a 2 October 2012 North Carolina Industrial Commission (the "Commission") opinion and award denying him medical and indemnity compensation

under the Workers' Compensation Act. On appeal, Plaintiff argues the Commission erred by determining a 28 June 2009 workplace accident did not proximately cause his lower back injury. Upon review, we affirm.

I. Facts & Procedural History

Richard Childress Racing Enterprises ("Childress Racing") owns and operates racecars that compete at various levels of NASCAR. In late 2005 or early 2006, Plaintiff began working for Childress Racing as a project engineer and jackman. As a project engineer, Plaintiff maintained the racecars in the team's shop. As a jackman, Plaintiff was part of the pit crew during races. In this role, he would jump over the pit wall during pit stops and lift the racecars with a 31-pound tire jack. Other pit crew members then replaced the cars' tires. As a jackman, Plaintiff also attended mandatory daily strength-training sessions.

In 2009, Plaintiff worked on the pit crew for Car No. 33 in the Sprint Cup Series, NASCAR's highest level of racing. On 28 June 2009, Plaintiff worked as Car No. 33's jackman at New Hampshire Motor Speedway in Loudon, New Hampshire. During the race, Plaintiff jumped over the pit wall to assist Car No. 33 during a pit stop. As Plaintiff was running out to the car,

another racecar hit Plaintiff's right knee and threw him in the air. After hitting the ground, Plaintiff immediately got up and finished his pit crew duties. Plaintiff and his team also completed another pit stop later in the race. Plaintiff neither sought nor received medical attention that day.

The next day, Plaintiff visited his family doctor at Bethany Medical Center in High Point. He sought treatment for his swollen right knee. Although Plaintiff also testified he talked to the doctor about his lower back pain, the Patient Visit Form does not mention a lower back injury. During this visit, Plaintiff received an X ray of his right leg.

After the accident, Plaintiff continued to work for Childress Racing as a project engineer and jackman. He did not notify Childress Racing of any back injury, but he did tell his athletic trainers about his leg injury. Plaintiff testified he did not notify Childress Racing about his lower back pains for fear of losing his jackman job. On 1 July 2009, 7 July 2009, and 14 July 2009, Shane Picha, the team's athletic trainer, treated Plaintiff's right knee. Picha testified Plaintiff never complained of lower back pain on these days. Picha also observed the pit crew during their workout sessions and

testified Plaintiff's weight room performance never changed after the accident.

About three or four weeks after the accident, Plaintiff was demoted to backup jackman. Childress Racing stated this demotion was due to Plaintiff's poor performance as jackman. In early December 2009, Childress Racing reduced the number of racecars on its team from four to three. Michael Dillon, Childress Racing's Vice President of Competition, testified that due to this downsizing Childress Racing had to reposition or fire some employees. On 2 December 2009, Childress Racing fired Plaintiff. Dillon testified he was not aware of Plaintiff's back injury at that time. Plaintiff filed for and received unemployment benefits following his termination.

On 30 December 2009, Plaintiff returned to Bethany Medical Center complaining of lower back pain. The Patient Visit Form indicates his doctor recommended an MRI. However, Plaintiff did not have medical insurance for the MRI. Still, he received a CT scan and X ray of his spine. The CT scan showed "[p]ronounced central canal stenosis [at] L4-L5 with associated degenerative disc disease change." The X ray showed a "[n]ormal lumbar spine."

In early 2010, NASCAR hired Plaintiff as a senior designer. This position does not include the physical demands of being a jackman, but is instead similar to Plaintiff's previous role as project engineer.

On 19 June 2010, Plaintiff returned to Bethany Medical Center. The Patient Visit Form indicates Plaintiff complained of muscle spasms in his back. Plaintiff scheduled an MRI and received pain medication. On 7 July 2010, Plaintiff returned to receive the MRI. The doctor compared this MRI to a previous one from 19 August 2008. The 2008 MRI was taken for Plaintiff's unrelated left hip pain. The 7 July 2010 MRI showed "mild spondylosis of the lumbar spine with multilevel degenerative disk disease . . . [and a] new small to moderate sized right paracentral disk herniation/protrusion at the L3-4 level." Although the degenerative disk disease diagnosis suggests Plaintiff's back pain was pre-existing, the paracentral disk herniation was a new discovery.

In mid-2010, NASCAR suggested Plaintiff visit Dr. Jerry M. Petty ("Dr. Petty"), a neurosurgeon at the Carolina Neurosurgery & Spine Association. On 22 December 2010, Plaintiff visited Dr. Petty. Dr. Petty conducted a physical examination and looked at the 7 July 2010 MRI. Dr. Petty did not examine the 2008 MRI.

He concluded Plaintiff had "a possible tear in his capsule at L4-5," "some degenerative disease in his facets" and "a disc that is just on the right side of L3-4 that is . . . indenting the sac." Dr. Petty started Plaintiff on physical therapy.

On 2 February 2011, Dr. Petty recommended an SI joint injection to reduce Plaintiff's pain. On 18 February 2011, another doctor at Carolina Neurosurgery & Spine Association performed the SI joint injection. On 2 March 2011, Plaintiff had a follow-up appointment and told Dr. Petty the injection did not reduce his pain. Dr. Petty told Plaintiff to continue physical therapy.

On 25 March 2011, at Dr. Petty's recommendation, Plaintiff received a lumbar myelogram at Carolinas Medical Center. A comparison of this test's results with the 7 July 2010 MRI showed: (i) a moderate central spinal stenosis at L4-L5; (ii) clear cut compression of the right and left L5 nerve roots at the L4-L5 level; and (iii) a L3-L4 right-sided extruded disc herniation. Dr. Petty explained that this showed the myelogram and the 7 July 2010 MRI had similar results at L4-L5. At L3, there was a piece of disk between the third and fourth vertebrae that was extruding down over the top of the L4 vertebra. On 29 March 2011, Dr. Petty again saw Plaintiff and recommended that

Plaintiff continue with physical therapy instead of pursuing surgery.

Following Dr. Petty's diagnosis, Plaintiff visited Dr. Ranjan Roy ("Dr. Roy") at Piedmont Neurosurgery & Spine for a second opinion. On 10 May 2011, Dr. Roy evaluated Plaintiff's 7 July 2010 MRI, myelogram, and CT scan. Dr. Roy recommended "surgery for decompression at L3-4, L4-5 and a discectomy on the right side at L3-4."

On 4 February 2011, Plaintiff filed a worker's compensation claim. On his form, Plaintiff alleged injury to his back, right leg, right knee, right hip and right arm. On 23 March 2011, Plaintiff filed a request for hearing. On 21 June 2011, Childress Racing denied his entire claim.

On 13 September 2011, Dr. Roy gave a deposition. His testimony with Plaintiff's attorney proceeded, in relevant part, as follows:

> Q. Do you have an opinion satisfactory to yourself and to a reasonable degree of medical certainty whether [Plaintiff's] injury while working on the pit crew on June 28th, 2009, caused his disc herniation on the right with a free fragment at L3-L4?
>
> A. Based on what I know and the severity of the injury as he described it - and there are some assumptions, such as he did not, you know, fall down the day before at home - I would have to assume that based on the

> injury that he had the lack of finding in August '08 that more likely than not the disc protrusion was a result of the severe injury, and I suspect that that's what has really led to his worsening of his symptoms.
>
> Q. Do you then have an opinion to a reasonable degree of medical certainty, Dr. Roy, whether Mr. Ferguson's work injury on June 28th, 2009, caused the need for the surgical procedure you recommended?
>
> A. I would say that this gentleman at L4-5 would at some point require surgery, but I have no idea when that would be. I believe that the surgery required at L3-L4 is definitely a result of the severity of the injury in June of '09.

However, Dr. Roy later testified that:

> I would think that if one was having severe pain, that he would probably have gone to see physicians earlier than six months. There are some that don't go. There are others that go every day. So I -- you know, I am going to assume that, you know, perhaps he was all right, and maybe that's why he didn't go, again, after the June incident until December. But I really -- I really can't answer your question to -- to your satisfaction simply because I really don't know the patient that well.

Subsequently, the following exchange occurred:

> Q. What about to a reasonable degree of medical certainty, more likely than not, let's say?
>
> A. It is -- I couldn't really answer that question, simply because I do not know when it occurred, what kind of activities he was engaged in before or after. As I said,

> sometimes it doesn't take much to rupture a disc. As you've said, this gentleman already has a degenerative condition, so it probably wouldn't take much to rupture a disc. And so I -- the only thing that I can say is that the incident on June 28 may have potentially caused this, but it may have occurred before or after that, and I will never know that.

Dr. Roy testified that his opinion about causation depended on whether Plaintiff's lower back pain started immediately after the 28 June 2009 accident. Specifically, he stated, "[A]ssuming no other days existed . . . [o]ther than June 28th and my evaluation with him, then I would have to say that that is what is responsible for the disc herniation."

On 1 December 2011 Dr. Petty gave a deposition. Dr. Petty first saw the 2008 MRI at his deposition. After comparing the 2008 MRI with the 2010 MRI, Dr. Petty stated that both MRIs showed degenerative disk disease, suggesting Plaintiff's back had pre-existing issues. Plaintiff's attorney asked Dr. Petty whether the 28 June 2009 accident "more than likely aggravated or accelerated [Plaintiff's] back condition to the point that it's in its present shape." The following exchange occurred:

> A. I -- the, the thing that, the history I have is that's when his pain started and it's continuing, if it's continuing, then I think that it did. I don't think it probably caused the changes that's seen on the scans. The L3-4 disk, I can't say. I don't know, I don't know when that happened between here and here. But I don't, I'm

> not sure that that's the symptomatic lesion anyhow.
>
> Q. Okay.
>
> A. I would think the tear at L4-5 would be just as symptomatic, apt to be symptomatic and I think most of his problem is, is not so much disk as it is degeneration. Well, it is degeneration and aggravation of that, but I think it's clearly aggravated by the injury he had in New Hampshire.

On cross-examination, Dr. Petty supplemented his opinion with the following statement:

> I think it should be made clear that the reason I'm basing my opinion on the fact that [Plaintiff], that his problems started when he was hit is because that's when he told me his pain started.

Childress Racing's attorney later asked Dr. Petty:

> Has your opinion changed at all learning that [Plaintiff] did not even the day after the incident report back pain and didn't go to any medical professional to report back pain for approximately six months?

Dr. Petty responded:

> Yes. I think that would be, that would, that would certainly not -- and I was relating the fact that he, I thought his injury, I thought his pain started at the day he had his injury.

Dr. Petty summarized his causation testimony as follows: "[I]f [Plaintiff's] pain started with the injury, then it's related. If it didn't, then it's not related."

On 16 July 2012, the Full Commission heard the case. On 2 October 2012, the Full Commission entered an opinion and award determining: (i) Plaintiff injured his right knee as a result of the 28 June 2009 accident; (ii) Plaintiff did not injure his lower back as a result of the 28 June 2009 accident; and (iii) the testimony from Dr. Petty and Dr. Roy failed to "support a finding linking the compensable injury by accident to [Plaintiff's] low back complaints." Consequently, the Full Commission denied Plaintiff compensation for his lower back injury. However, it awarded: (i) medical expenses for Plaintiff's right knee treatment; and (ii) an evaluation to determine the extent of Plaintiff's permanent partial disability to his right leg. On 23 October 2012, Plaintiff filed timely notice of appeal.

II. Jurisdiction & Standard of Review

This Court has jurisdiction to hear the instant case pursuant to N.C. Gen. Stat. § 97-86 (2011) ("[E]ither party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice . . . appeal from the decision of [the Industrial] Commission to the Court of Appeals.").

This Court's "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) (citation omitted). Our Court clarifies that:

> The findings of fact made by the Commission are conclusive upon appeal when supported by competent evidence, even when there is evidence to support a finding to the contrary. In weighing the evidence the Commission is the sole judge of the credibility of the witnesses and the weight to be given to their testimony and may reject a witness' testimony entirely if warranted by disbelief of that witness. Where no exception is taken to a finding of fact . . ., the finding is presumed to be supported by competent evidence and is binding on appeal.

Workman v. Rutherford Elec. Mbrshp. Corp., 170 N.C. App. 481, 485-486, 613 S.E.2d 243, 247 (2005) (alteration in original)(quotation marks and citations omitted).

We review the Commission's legal conclusions *de novo*. *Allen v. Roberts Elec. Contractors*, 143 N.C. App. 55, 63, 546 S.E.2d 133, 139 (2001). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33,

669 S.E.2d 290, 294 (2008) (quotations marks and citation omitted).

III. Analysis

On appeal, Plaintiff argues the Commission erred by determining the 28 June 2009 accident did not cause his lower back injury. Specifically, Plaintiff contends the Commission erred because: (i) its legal conclusions erroneously determined the testimony of Dr. Petty and Dr. Roy was only "speculation and conjecture;" (ii) its legal conclusions applied the incorrect causation standard; and (iii) its factual findings about causation were not supported by competent evidence. Upon review, we affirm.

A. Conclusions of Law

Plaintiff first argues the Commission erred by: (i) determining the testimony from Dr. Petty and Dr. Roy did not rise above "speculation and conjecture;" and (ii) using a "reasonable degree of medical certainty" standard.[1] We disagree.

The North Carolina Workers' Compensation Act generally requires employers to "pay . . . compensation for personal injury or death by accident arising out of and in the course of

[1] Because both of these arguments concern the weight given to the testimony of Plaintiff's medical experts, we consider them together.

[employees'] employment." N.C. Gen. Stat. § 97-3 (2011). "The claimant in a workers' compensation case bears the burden of initially proving each and every element of compensability, including a causal relationship between the injury and his employment." ***Adams v. Metals USA***, 168 N.C. App. 469, 475, 608 S.E.2d 357, 361 (2005) (quotation marks and citations omitted).

"An injury is compensable as employment-related if any reasonable relationship to employment exists. Although the employment-related accident need not be the sole causative force to render an injury compensable, the plaintiff must prove that the accident 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) (quotation marks and citations omitted). The causation element is "the very sheet anchor of the Work[ers]' Compensation Act." ***Perry v. Am. Bakeries***, 262 N.C. 272, 276, 136 S.E.2d 643, 647 (1964).

Our Supreme Court further states:

> In cases involving 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. However, when such expert opinion testimony is based merely upon speculation and conjecture, . . . it is not sufficiently reliable to qualify as competent evidence on issues of medical causation. The evidence must be such as to

> take the case out of the realm of conjecture and remote possibility, that is, there must be sufficient competent evidence tending to show a proximate causal relation.

Holley, 357 N.C. at 232, 581 S.E.2d at 753 (quotation marks and citations omitted)(alteration in original). In light of this discussion, we now analyze the appropriate standard by which the Commission should analyze expert medical testimony regarding causation.

First, it is well-established that expert medical testimony about causation is generally admissible in workers' compensation cases. *Id.* at 233, 581 S.E.2d at 753 ("[E]xpert testimony as to the *possible* cause of a medical condition is admissible."); *see also Cherry v. Harrell*, 84 N.C. App. 598, 604–05, 353 S.E.2d 433, 437 (1987). Thus, when plaintiffs present this type of expert medical testimony, the Commission must: (i) consider the testimony; and (ii) assess its credibility and weight. *See Holley*, 357 N.C. at 233, 581 S.E.2d at 753. The medical experts' level of certainty impacts the weight the Commission assigns the testimony. *See id.*

For instance, expert medical testimony that a workplace accident *possibly* caused injury, standing alone, does not usually support a causation finding. *See id.* at 234, 581 S.E.2d at 754 ("[M]ere possibility has never been legally competent to

prove causation."). In *Holley*, an employee twisted her leg at work. *Id.* at 229–230, 581 S.E.2d at 751. Six weeks after the accident, a doctor diagnosed the employee with deep vein thrombosis ("DVT"). *Id.* at 230, 581 S.E.2d at 751. The employee then sought workers' compensation for her DVT. *Id.* At deposition, the doctor testified there was a "low possibility" the employee's DVT was caused by the work injury because there was "just a galaxy of possibilities." *Id.* at 233, 581 S.E.2d at 753. The plaintiff did not offer other evidence showing causation. *See id.* There, our Supreme Court held the plaintiff failed to prove causation because the doctor did not "express an opinion to any degree of medical certainty as to the cause of plaintiff's DVT." *Id.* at 234, 581 S.E.2d at 754. In sum, when a plaintiff's workers' compensation claim hinges almost completely on expert medical testimony, we require a greater degree of medical certainty. *See id.*

Nonetheless, expert medical testimony about a ***possible*** cause of injury may still support a causation finding when coupled with additional evidence. *Adams*, 168 N.C. App. at 483, 608 S.E.2d at 365. For example, in *Adams*, an employee brought a workers' compensation claim for back injuries after he fell from a ladder at work. *Id.* at 469, 608 S.E.2d at 368. There, the

employee's doctor testified that "if he was asymptomatic before he fell off and then developed symptoms after he fell off, then I would certainly believe that the falling off the ladder was the cause of his difficulty." *Id.* at 479, 608 S.E.2d at 364. However, he qualified his opinion by stating he "would not be able to say that with reasonable medical certainty." *Id.* at 481, 608 S.E.2d at 365. There, we determined that "[t]he fact that the treating physician in this case could not state with reasonable medical certainty that plaintiff's accident caused his disability, is not dispositive—the degree of the doctor's certainty goes to the weight of his testimony." *Id.* at 483, 608 S.E.2d at 365.

Moreover, in *Adams* additional facts from the plaintiff's medical history supported a causation finding. *See id.* at 483, 608 S.E.2d at 365. Consequently, we held that the doctor's "testimony, combined with the additional evidence in the case, including the history and medical testimony, provided competent record evidence which supports the Commission's finding with respect to causation." *Id.* at 483, 608 S.E.2d at 365.

In the present case, Plaintiff argues the Commission erred in its legal conclusions by: (i) finding the testimony of Dr.

Petty and Dr. Roy was only "speculation and conjecture;" and (ii) applying an incorrect legal standard for causation.

In its opinion and award, the Commission made the following legal conclusions:

> 1. Plaintiff suffered an injury by accident arising out of and in the course and scope of his employment with defendant-employer on June 28, 2009 resulting in an injury to his right knee. N.C. Gen. Stat. § 97-2(6).
>
> 2. The Full Commission concludes that plaintiff did not sustain an injury to his low back on June 28, 2009. "The Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965). The Commission "may believe all or a part or none of any witness's testimony." *Harrell v. J.P. Stevens & Co.*, 45 N.C. App. 197, 205, 262 S.E.2d 830, 835, *disc. rev. denied*, 300 N.C. 196, 269 S.E.2d 623 (1980). Furthermore, medical testimony that relies on speculation and conjecture, or unproven facts, is not sufficiently reliable to qualify as competent evidence concerning the nature and cause of an injury. *Young v. Hickory Bus. Furn.*, 353 N.C. 277, 538 S.E.2d 912 (2000); *Seay v. Wal-Mart Stores, Inc.*, 180 N.C. App. 432, 637 S.E.2d 299 (2006). Finally, to establish causation in cases such as this one, the expert testimony must "meet the reasonable degree of medical certainty standard necessary to establish a causal link." *Holley v. ACTS, Inc.*, 357 N.C. 288, 581 S.E.2d 750 (2003). The testimony of Dr. Petty and Dr. Roy regarding the causal link between plaintiff's low back complaints and the injury of June 28, 2009 did not rise

> above the level of speculation and conjecture, when taken as a whole, and therefore was insufficient to support a finding linking the compensable injury by accident to plaintiff's low back complaints. Therefore, plaintiff's claims for medical compensation for the low back and for indemnity compensation related to the partial loss of wage earning capacity which is attributable solely to plaintiff's low back problem, must be denied.

We now analyze whether these conclusions: (i) improperly weighed Plaintiff's experts' testimony; or (ii) applied an incorrect legal standard.

First, the Commission did not err in determining plaintiff's experts' medical testimony was "speculation and conjecture." Preliminarily, the Commission correctly considered the admissible expert medical testimony of Dr. Petty and Dr. Roy. *See Holley*, 357 N.C. at 233, 581 S.E.2d at 753. In fact, the Commission explicitly references their testimony numerous times in its opinion and award. Next, the Commission appropriately assessed "the credibility of the witnesses and the weight to be given their testimony." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965). Here, the Commission assigned little weight to the doctors' testimony because the doctors did not fully understand Plaintiff's medical history and could not speak conclusively to

causation. Given this reasoning, we hold the Commission did not err in determining the medical testimony was merely "speculation and conjecture." In fact, even when medical experts *do* testify to a reasonable degree of medical certainty, the Commission may still consider their testimony unpersuasive. *See Holley*, 357 N.C. at 231, 581 S.E.2d at 752 (holding that the Commission is "the sole judge of the credibility and the evidentiary weight to be given to" expert testimony).

Next, the Commission applied the correct legal standard regarding causation. When, as in the instant case, a plaintiff's case depends almost completely on expert medical testimony about causation, we require a persuasive degree of medical certainty. *See id.* at 234, 581 S.E.2d at 754. Here, plaintiff's experts equivocated in their testimony regarding causation. As in *Holley*, the Commission did not err by determining this type of uncertain medical testimony, standing alone, does not prove causation. *See id.* at 232, 581 S.E.2d at 753.

Plaintiff cites *Adams* to support his argument that his experts did not need to testify to a higher degree of certainty. However, *Adams* is factually distinguishable from the instant case. Here, unlike in *Adams*, Plaintiff experienced back issues

prior to his work accident. Furthermore, the doctor in *Adams* testified that "although a disc herniation can be caused by everyday activities, he had no indication that everyday activities caused plaintiff's disc herniation." 168 N.C. App. at 482, 608 S.E.2d at 365. Here, on the other hand, neither Dr. Petty nor Dr. Roy could provide similar assurances. Thus, the instant case lacks the additional facts that supported a causation finding in *Adams*.

Consequently, we hold the Commission's legal conclusions: (i) appropriately weighed Plaintiff's experts' testimony; and (ii) applied the correct legal standard.

B. Findings of Fact

Plaintiff next argues the Commission erred because its findings of fact about causation are not supported by competent evidence. For instance, Finding of Fact No. 21 states:

> 21. Based upon the preponderance of the competent, credible evidence of record, the Full Commission finds that plaintiff has failed to prove that his low back complaints are causally related to the injury he sustained at work on June 28, 2009.

Upon review, we believe the factual findings at issue are supported by competent evidence.

First, after his 28 June 2009 accident, Plaintiff immediately continued working. Also, Plaintiff completed

another pit stop later that day. Furthermore, Plaintiff neither sought nor received any medical attention on the day of the accident. When Plaintiff went to the doctor the next day, the Patient Visit Form does not indicate Plaintiff complained of back pain. During that visit, Plaintiff received an X ray of his right leg, but not his lower back.

Furthermore, after the incident Plaintiff continued to work as a jackman and regularly worked out in the gym. Plaintiff never mentioned his lower back pain to Picha, his athletic trainer, but instead only reported knee pain. Plaintiff also never notified Childress Racing of his back injury while he was employed there. In fact, Plaintiff did not receive medical attention for his lower back until six months after the 28 June 2009 accident.

Additionally, the Commission assigned little weight to Plaintiff's experts' testimony. *See Workman*, 170 N.C. App. at 485–486, 613 S.E.2d at 247. For instance, Dr. Roy testified that he "didn't know the patient that well" and "based his opinion regarding causation on his understanding that plaintiff began complaining of low back pain soon after the June 28, 2009 injury." Additionally, Dr. Petty "initially testified that in his opinion the incident from June 28, 2009, aggravated

plaintiff's back condition," but then changed his opinion when he was told on cross-examination that Plaintiff did not seek medical attention for six months after the accident.

This Court does not re-weigh evidence; instead we only determine whether competent evidence supports the Commission's findings. *See Simmons ex rel. Simmons v. Columbus Cnty. Bd. of Educ.*, 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005). Upon review, we hold the Commission's findings of fact are supported by competent evidence.

IV. Conclusion

For the forgoing reasons, we conclude the Commission did not err in denying Plaintiff compensation for his back injury. Consequently, the Commission's opinion and award is

AFFIRMED.

Judges McGEE and STEPHENS concur.

Report per Rule 30(e).