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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1166

Filed: 20 June 2017

North Carolina Industrial Commission, I.C. No. 13-702297

SHARRON PENNEY, Employee, Plaintiff,

v.

UNC HOSPITALS, Employer, SELF-INSURED, (ALLIED CLAIMS
ADMINISTRATION, Servicing Agent), Defendant.

Appeal by plaintiff from opinion and award entered 12 July 2016 by the North
Carolina Industrial Commission. Heard in the Court of Appeals 18 April 2017.

*Law Offices of James Scott Farrin, by Michael F. Roessler, for plaintiff-
appellant.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Wes
Saunders, for defendant-appellee.*

BRYANT, Judge.

Where defendant's Form 44 and brief put plaintiff on notice of the grounds for
appeal from the opinion and award of the Deputy Commissioner, the Commission did
not abuse its discretion in denying plaintiff's motion to dismiss. Where the
Commission did not err in concluding plaintiff did not suffer a compensable specific
traumatic incident, we affirm.

On 27 August 2012, plaintiff Sharon Penney was employed by defendant UNC Hospitals as an emergency room nurse at UNC Hospital in Chapel Hill, North Carolina. On that day, plaintiff experienced a sudden, severe pain in her lower back while bending over at a forty-five-degree angle and counting medications in the Pyxis machine.¹ As a result, plaintiff left her shift approximately ninety minutes early, but did not report an injury to defendant or fill out an incident report on that day. Two days later, plaintiff returned to work, as scheduled, and resumed her regular job duties.

On 25 September 2012, plaintiff saw Dr. Timothy Collins, a neurologist, for temporomandibular joint (“TMJ”) syndrome symptoms. Plaintiff also informed Dr. Collins that she had begun to experience back pain, but did not mention that her back pain was work related or that it had commenced while working. Dr. Collins prescribed Skelaxin and diagnosed plaintiff with “probable musculoskeletal back pain.” On 18 October 2012, plaintiff returned to Dr. Collins and told him that the Skelaxin was not alleviating her back pain. Dr. Collins recommended plaintiff undergo an MRI of the lumbar spine.

On 25 October 2012, plaintiff went to the UNC Hospital emergency department with continued back pain. Plaintiff told the attending physician that “her back became severely painful out of the blue while at work one day.” Plaintiff

¹ A “Pyxis machine” is a machine used for counting medications.

had an MRI, which revealed “[m]ulti[-]level degenerative disk [sic] disease” with “[f]indings . . . most severe at L4–5 and L3–4 with moderate canal and foraminal stenosis with listheses.”

The next day, on 26 October 2012, plaintiff informed defendant for the first time of the alleged injury. She filled out an incident report but did not include any details regarding how or the date on which her injury occurred. Plaintiff identified the injury as “severe lower back pain with muscle spasms.” Defendant directed plaintiff to Dr. Kevin Carneiro, a physical medicine and sports rehabilitation specialist with the UNC Spine Center for evaluation. Plaintiff saw Dr. Carneiro the same day, and Dr. Carneiro reported that plaintiff had a gradual onset of low back pain. He prescribed a steroid dose pack and recommended physical therapy and continued pain management therapy with Dr. Collins.

On 17 April 2013, plaintiff filed a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, indicating plaintiff sustained a workplace injury by “bending down to count medications and felt a sharp pain,” at “5:00 a.m. approx. on 8/27/2012.” Following defendant’s denial of the claim by filing a Form 61, plaintiff filed a Form 33 *Request that Claim be Assigned for Hearing*.

Meanwhile, after various conservative treatments for plaintiff’s back pain had failed, plaintiff saw Dr. Carlos Bagley, a neurosurgeon with Duke Medicine, who recommended “L3/4 and L4/5 transforaminal lumbar interbody fusions” On 5

August 2013, Dr. Bagley performed this surgery on plaintiff. Plaintiff was released from the hospital on 9 August 2013 but readmitted on 11 August 2013 with complaints of increased back and hip pain. Plaintiff was released from the second hospital stay on 14 August 2013. Since then, plaintiff has participated in aquatic physical therapy, had epidural injections, and continued pain management with Dr. Collins.

On 17 April 2014, the matter came on to be heard before Deputy Commissioner Chrystal Redding Stanback, who entered an Opinion and Award on 21 April 2015 finding plaintiff suffered a compensable injury and ordering defendant to pay benefits. Defendant timely appealed to the Full Commission (the “Commission”) on 27 April 2015 and thereafter, submitted a Form 44 Application for Review and Brief to the Commission on 15 June 2015. On 9 June 2015, plaintiff submitted her response, including a motion to dismiss defendant’s appeal asserting that defendant failed to identify with particularity the factual grounds for its appeal.

On 12 July 2016, the Commission entered an Opinion and Award denying plaintiff’s motion to dismiss, and reversing the deputy commissioner’s decision and denying plaintiff’s claim for compensation. Plaintiff appeals.

On appeal, plaintiff contends the Commission (I) abused its discretion when it denied plaintiff’s motion to dismiss defendants’ appeal; (II) erred when it concluded

Opinion of the Court

plaintiff did not suffer a compensable specific traumatic incident; and (III) erred when it found and concluded that plaintiff was barred from recovering benefits pursuant to N.C. Gen. Stat. § 97-22.

Standard of Review

Our review of a decision of the Industrial Commission is limited to determining whether there is any competent evidence to support the findings of fact, and whether the findings of fact justify the conclusions of law. The findings of the Commission are conclusive on appeal when such competent evidence exists, even if there is plenary evidence for contrary findings. This Court reviews the Commission's conclusions of law *de novo*.

Egen v. Excalibur Resort Prof'l, 191 N.C. App. 724, 728, 663 S.E.2d 914, 918 (2008) (quoting *Ramsey v. S. Indus. Constructors, Inc.*, 178 N.C. App. 25, 29–30, 630 S.E.2d 681, 685 (2006)).

I

Plaintiff first argues the Commission abused its discretion when it denied plaintiff's motion to dismiss defendants' appeal. Specifically, plaintiff contends that defendants failed to clearly identify with particularity which factual findings made by the deputy commissioner were erroneous, and this failure required dismissal of their appeal. We disagree.

Our standard of review of the Commission's exercise of a discretionary power is a deferential one, and the Commission's decision will not be overturned absent an abuse of discretion. "Abuse of discretion results where the . . . ruling is manifestly unsupported by reason or so

Opinion of the Court

arbitrary that it could not have been the result of a reasoned decision.”

Wade v. Carolina Brush Mfg. Co., 187 N.C. App. 245, 251, 652 S.E.2d 713, 717 (2007) (alteration in original) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

A deputy commissioner’s opinion and award may be appealed to the Full Commission. N.C. Gen. Stat. § 97-85 (2015). On appeal to the Full Commission, the

appellant shall state the grounds for review. The grounds shall be stated with particularity, including the errors allegedly committed by the . . . Deputy Commissioner Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

4 N.C. Admin. Code 10A.0701(d) (2015). The underlying purpose of Rule 701 is to ensure that there is sufficient notice to the appellee of what issues will be addressed by the Full Commission. *See Roberts v. Wal-Mart Stores, Inc.*, 173 N.C. App. 740, 744, 619 S.E.2d 907, 910 (2005) (“Without notice of the grounds for appeal, an appellee has no notice of what will be addressed by the Full Commission.”).

“The rules do provide that the Industrial Commission may in its discretion, waive[] the use of the Form 44.” *Id.* (alteration in original) (citation omitted). “However, even though the Commission may waive the use of Form 44, the rule specifically requires that grounds for appeal be set forth with particularity.” *Id.*

(quoting *Adams v. M.A. Hanna Co.*, 166 N.C. App. 619, 623, 603 S.E.2d 402, 405–06 (2004)).

We determine whether the Commission abused its discretion by not ruling that [a party] waived issues by violating Rule 701 through our consideration of whether the appellant provided the appellee with adequate notice of the grounds for appeal through other means such as addressing the issue in its brief to the Full Commission and whether the Commission addressed the issues raised by appellants in its Opinion and Award.

Lowe v. Branson Auto., 240 N.C. App. 523, 535, 771 S.E.2d 911, 919 (2015) (citation omitted).

In *Lowe*, the plaintiff argued that the defendants’ Form 44 was insufficiently particular to put the plaintiff on notice of what issues were before the Full Commission. *Id.* at 534, 771 S.E.2d at 918–19. The defendants’ Form 44

assigned error to the Deputy Commissioner’s conclusions of law #1, #2, #3, and #5 . . . by stating, with respect to each conclusion: “Error is assigned to Conclusion of Law No. [x], as this conclusion is contrary to law, omits salient facts, and is not adequately supported by findings of fact which are supported by the competent evidence in the Record.”

Id. at 535, 771 S.E.2d at 919. This Court concluded that even if the defendants’ Form 44 “lacked the requisite specificity under Rule 701, the Commission did not abuse its discretion by failing to deem [the] defendants’ issues as waived.” *Id.* This was because “the Commission’s conclusions of law directly addressed the issues raised by [the] defendants[] in their Form 44 and brief. As such, [the] plaintiff [could] not and

[did] not contend that he received inadequate notice of [the] defendants' grounds for appeal—the underlying consideration behind the spirit of Rule 701.” *Id.* at 536, 771 S.E.2d at 919–20.

In the instant case, defendants alleged error in their Form 44 as follows:

1. Deputy Commissioner Chrystal Stanback erred in entering Conclusion of Law No. 1 in the Opinion and Award filed on April 21, 2015. Conclusion of Law No. 1 is not supported by the evidence.
2. Deputy Commissioner Chrystal Stanback erred in entering Award No. 2 in the Opinion and Award filed on April 21, 2015. Award No. 2 is not supported by competent evidence.

Then, in ruling on the procedural issue raised by plaintiff, the Commission found and concluded as follows:

In reviewing Defendant's Form 44 and brief, Defendant alleges error to the following portions of former Deputy Commissioner Stanback's Opinion and Award: Conclusion of Law 1, which concluded that on August 27, 2012 Plaintiff suffered a compensable specific traumatic incident to her back; Conclusion of Law 2, which concluded that the specific traumatic incident cause[d] or contributed to Plaintiff's back complaints for which she has received medical treatment (this error is alleged in Defendant's brief); and Award 2, in which two physicians are authorized to provide medical treatment to Plaintiff. Defendant states in its brief, with more particularity, the grounds for its request for review by the Full Commission, including assertions that the medical records, employee incident report and testimony of a witness tend to prove Plaintiff did not sustain a specific traumatic incident on August 27, 2012 and assertions that Plaintiff failed to prove through competent medical evidence that her back condition was caused by any incident occurring on August

Opinion of the Court

27, 2012. Based upon a review of the Form 44 and brief, Defendant not only set forth errors allegedly committed by former Deputy Commissioner Stanback, but also stated further grounds, with specificity, as to what evidence it has requested the Full Commission to review and re-weigh. Further, both filings provide Plaintiff, as the appellee, with sufficient notice of the issues to be reviewed by the Full Commission. Defendant's failure to allege error to specific findings of fact made by former Deputy Commissioner Stanback does not equate to a failure to set forth its grounds for review. Further, the fact that no error was assigned to specific findings of fact does not bind the Commission to accept or adopt the findings of fact made by former Deputy Commissioner Stanback as the Commission is not bound by the findings made by a Deputy Commissioner and the Commission can strike the findings made by a Deputy Commissioner even if no exception was taken to the findings. . . .

Based upon a review of the submissions by the parties and the above analysis, Defendant's June 15, 2015 submissions to the Full Commission set forth the grounds for appeal with sufficient particularity and provided notice to Plaintiff of what would be reviewed by the Full Commission. Therefore, Plaintiff's request to dismiss Defendant's appeal is DENIED.

Based on the errors alleged in the Form 44 and in defendant's accompanying brief in support, plaintiff's argument that defendant's Form 44 did not adequately identify the grounds for review before the Commission is unpersuasive. The Commission noted that defendant explicitly listed Conclusion of Law No. 1 and Award No. 2 in its Form 44 and further argued in its brief to the Commission that

plaintiff did not sustain a specific traumatic incident on 27 August 2012.² As the Commission further noted, “a failure to allege error [as] to specific findings of fact . . . does not equate to a failure to set forth . . . grounds for review.” Accordingly, plaintiff’s claim that she somehow lacked sufficient notice regarding what issues would be addressed by the Commission is without merit, and the Commission did not abuse its discretion in denying plaintiff’s motion to dismiss defendant’s appeal from the opinion and award of the Deputy Commissioner.

II

Plaintiff next contends the trial court erred when it concluded that she did not suffer a compensable specific traumatic incident. Specifically, plaintiff contends the competent evidence does not support key factual findings made by the Commission, particularly Findings of Fact Nos. 8, 9, 12, and 13. As such, plaintiff argues these erroneous factual findings undermine the Commission’s legal conclusions, specifically Conclusions of Law Nos. 2 and 3. We disagree.

A. Finding of Fact No. 8

Plaintiff challenges Finding of Fact No. 8:

8. The day after the MRI was performed, on October 26, 2012, Plaintiff completed an Employee Incident Report notifying Defendant for the first time that she was contending that she suffered a work-related injury.

² Defendant also referenced the exact transcript pages upon which it relied in order to support its arguments and also challenged the Deputy Commissioner’s conclusion regarding causation by stating that “[p]laintiff failed to establish a causal connection between the specific traumatic incident and the alleged injury.”

Opinion of the Court

However, she was unable to state the date of the injury, and when asked to describe how it occurred, simply wrote: “severe lower back pain with muscle spasms.”

While plaintiff acknowledges that “the incident report is blank as to the date of the incident,” in other words, plaintiff “was unable to state the date of the injury,” plaintiff challenges this finding because this is only evidence that, at most, the date of the injury was not included in the incident report. However, because every other line on the incident report was completed, it was logical for the Commission to find that plaintiff was unable to state the date her injury occurred. Plaintiff’s argument is unpersuasive and, accordingly, is overruled.

B. Finding of Fact No. 9

Plaintiff challenges Finding of Fact No. 9 as unsupported by competent evidence in that it fails to reflect the “fullness” of Dr. Carneiro’s testimony. That finding is as follows:

9. After Plaintiff reported her injury in late October 2012, Defendant referred Plaintiff to its Occupational Health Department, where she came under the care of Dr. Kevin Carneiro, a board-certified specialist in physical medicine, rehabilitation and sports medicine. According to Dr. Carneiro, Plaintiff described the insidious, or gradual, onset of back pain in August 2012, followed by an acute episode on October 25, 2012 that significantly worsened her back pain.

Plaintiff’s assertion to the contrary, based on the medical records and testimony of Dr. Carneiro, there was competent evidence in the record to support

Finding of Fact No. 9. In his deposition testimony, Dr. Carneiro confirmed that plaintiff presented to him with “insidious” back pain, “meaning ‘gradual or subtle,’” “beginning in August, but then [an] episode on 10/25 was an acute episode that significantly worsened her back pain.” Further, Dr. Carneiro’s clinic notes closely mirror Finding of Fact No. 9:

[Plaintiff] worked for at [sic] UNC Emergency Department where she works as a nurse, when she had an insidious onset of low back pain. . . . at the time of her pain, she continued to work, but it has progressively worsened until at its worst yesterday on 10/25/2012. . . . she presents today with acute back pain, which she describes as spasms, worse with standing and alleviated with lying down.

Accordingly, the Commission’s findings of fact are supported by competent evidence, and we overrule plaintiff’s argument.

C. Finding of Fact No. 12

Next, plaintiff challenges Finding of Fact No. 12 as unsupported by competent evidence because plaintiff contends the Commission has again failed to consider “the fullness of Dr. Bagley’s testimony[.]” Finding of Fact No. 12 is as follows:

In July 2013 Plaintiff came under the care of Dr. Carlos Bagley, a board-certified neurosurgeon, who performed a two-level fusion on August 5, 2013. When asked whether he could causally relate the back problems which required surgery to the alleged bending incident of August 27, 2012, Dr. Bagley testified that “bending over is a fairly common occurrence for folks to do, not only at work, but in their private lives So it’s hard for me to . . . associate a benign event, like bending, to the . . . all of a sudden manifestation of chronic changes on her back.” According

Opinion of the Court

to Dr. Bagley, Plaintiff's symptoms were the result of a culmination of multiple events.

Finding of Fact No. 12 incorporates verbatim text from Dr. Bagley's deposition, and it is also supported by other testimony presented by Dr. Bagley at his deposition. For instance, Dr. Bagley testified that "the incident in the emergency room," (plaintiff's bending over), was "mostly likely not what caused the pain[.]" "stenosis and degenerative changes [shown on plaintiff's MRI] have nothing to do with her bending over at work that day[.]" and that "every finding that [plaintiff] had on her MRI scan at the time she saw me, I'm fairly confident predated by a significant interval, the -- event of bending over at work." Accordingly, Finding of Fact No. 12 is supported by competent evidence, and plaintiff's argument that other testimony and factors should have been given more weight is not subject to our review. *See McGrady v. Olsten Corp.*, 159 N.C. App. 643, 646, 583 S.E.2d 371, 373–74 (2003) ("[T]his 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." (quoting *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998))). Plaintiff's argument is overruled.

D. Finding of Fact No. 13

Plaintiff challenges Finding of Fact No. 13 as unsupported by competent evidence. That finding is as follows:

Opinion of the Court

13. Plaintiff has failed to prove by a preponderance of the evidence that she suffered an interruption of her regular work routine on August 27, 2012, or that there was a specific traumatic incident at work on August 27, 2012. Plaintiff's testimony regarding the sudden onset of severe low back pain on that date while bending over counting medication in the Pyxis machine is not accepted as credible.

First, the Commission found that plaintiff's testimony regarding the onset of her injuries was not credible. As "[t]he Commission is the sole judge of the credibility of witnesses and the weight to be given their testimony[.]" the credibility of plaintiff's testimony is not subject to review by this Court. *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citation omitted).

Second, there is sufficient evidence in the record to support the Commission's finding. Plaintiff never reported to her supervisors that she sustained a work injury and did not file an incident report for her alleged injury until two months later, on 26 October 2012. Further, medical records established that plaintiff "did not have any inciting incident/trauma, but report[ed] that her back became severely painful out of the blue while at work one day." Finally, when plaintiff filed an incident report on 26 October 2012, she did not state when or how she was injured. Plaintiff left the date section of the injury form blank, but detailed how her injury occurred, writing "severe lower back pain with muscle spasms." Accordingly, there is competent evidence to support Finding of Fact No. 13, and plaintiff's argument is overruled.

E. Conclusions of Law Nos. 2 & 3

Plaintiff also challenges Conclusions of Law Nos. 2 and 3 as unsupported by the Commission's findings of fact. Those conclusions of law state in relevant part that "[p]laintiff was performing her normal work routine, under normal working conditions on August 27, 2012 and has failed to prove by a preponderance of the evidence that she sustained an injury by accident[.]" (Conclusion of Law No. 2), and "[t]he onset of pain, without more, does not establish evidence of a specific traumatic incident. . . . Because Plaintiff has failed to prove she sustained an injury at a judicially cognizable point in time, she cannot prove she sustained a specific traumatic incident[.]" (Conclusion of Law No. 3).

With respect to back injuries . . . where injury to the back arises out of and in the course of 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.

N.C. Gen. Stat. § 97-2(6) (2015). "An 'accident' is not established by the mere fact of injury but is to be considered as a separate event preceding and causing the injury." *Searsey v. Perry M. Alexander Constr. Co.*, 35 N.C. App. 78, 79, 239 S.E.2d 847, 849 (1978) (citations omitted).

Plaintiff must present credible evidence that the injury occurred at a "judicially cognizable time." *Fish v. Steelcase, Inc.*, 116 N.C. App. 703, 708, 449 S.E.2d 233, 237 (1994). In the instant case, Finding of Fact No. 7, which plaintiff does not challenge

on appeal, stated as follows: “Plaintiff told the attending physician that she did not have any lifting incident or trauma, but that, out of the blue, one day while at work, her back became severely painful. Plaintiff did not report the onset of pain while bending over counting medication in the Pyxis machine.” Furthermore, Finding of Fact No. 12, which we have determined is supported by competent evidence, stated that “[a]ccording to Dr. Bagley, [p]laintiff’s symptoms were the result of a culmination of multiple events.” Based on the foregoing, including the Commission’s finding that “[p]laintiff’s testimony regarding the sudden onset of severe low back pain” was not credible, the Commission’s findings of fact support its Conclusions of Law Nos. 2 and 3 that plaintiff did not meet her burden to establish a compensable specific traumatic incident. *See Holley v. ACTS, Inc.*, 357 N.C. 228, 231, 581 S.E.2d 750, 752 (2003) (“In a worker’s compensation claim, the employee ‘has the burden of proving that his claim is compensable.’” (quoting *Henry v. A.C. Lawrence Leather Co.*, 231 N.C. 477, 479, 57 S.E.2d 760, 761 (1950))). Accordingly, plaintiff’s argument is overruled.

III

Plaintiff also argues the Commission erred when it found and concluded that plaintiff was barred from recovering benefits pursuant to N.C. Gen. Stat. § 97-22. Specifically, plaintiff contends that (A) defendants waived their right under N.C. Gen. Stat. § 97-22 by failing to brief or argue the issue before either the deputy commissioner or the Commission. In the alternative, plaintiff argues that (B) the

Commission's conclusion of law regarding untimely notice is not supported by any findings of fact. As we have affirmed on the merits the conclusion of the Commission that plaintiff failed to establish injury by accident and as a result is not entitled to compensation, it is not necessary to reach this issue. However, as plaintiff has raised it, we will address it.

A. Waiver

With regard to plaintiff's first claim that defendant waived its right to argue this issue,

[t]he Industrial Commission has authority to review, modify, adopt, or reject findings of a hearing commissioner and may *ex mero motu* strike out a finding of the hearing commissioner and his conclusion of law based thereon in order to make the record comply with the law, even though there is no exception to the finding or conclusion.

Garmon v. Tridair Indus., Inc., 14 N.C. App. 574, 576, 188 S.E.2d 523, 524 (1972) (citations omitted) (concluding that "[t]he fact that no reference was made to [the fact that plaintiff failed to give written notice of the alleged accident in compliance with G.S. 97-22] by the hearing commissioner [did] not preclude such finding by the [F]ull [C]ommission"). Thus, regardless of whether defendant raised the issue of notice pursuant to N.C. Gen. Stat. § 97-22 in its brief or in its argument, the Commission did not err in finding that plaintiff's claim was barred pursuant to N.C.G.S. § 97-22, where it may enter its own determination on this issue *ex mero motu*. *See id.* (citations omitted). Plaintiff's argument is overruled.

B. Notice of Claim

In the alternative, plaintiff contends that the Commission's conclusion that plaintiff did not provide timely notice is unsupported by the findings of fact. We disagree.

Pursuant to N.C.G.S. § 97-22,

no compensation shall be payable [to an injured employee] unless . . . written notice is given within 30 days after the occurrence of the accident . . . unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

N.C. Gen. Stat. § 97-22 (2015). The purpose of the notice requirement is twofold: “[f]irst, [it] enable[s] the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury; and second, [it] facilitate[s] the earliest possible investigation of the facts surrounding the injury.” *Yingling v. Bank of Am.*, 225 N.C. App. 820, 832, 741 S.E.2d 395, 404 (2013) (quoting *Gregory v. W.A. Brown & Sons*, 212 N.C. App. 287, 295–96, 713 S.E.2d 68, 74 (2011)).

The Commission made Finding of Fact No. 14 and Conclusion of Law No. 4 regarding the issue of notice:

14. Assuming, arguendo, that Plaintiff's back pain did begin suddenly on August 27, 2012 while bending over counting medication, Plaintiff failed to offer reasonable excuse for her failure to provide actual or written notice to Defendant of the injury within 30 days and Defendant was prejudiced by the late notice.

....

4. Plaintiff's claim is otherwise barred by her failure to prove that she provided actual or written notice of the injury within 30 days of its alleged occurrence, her failure to offer reasonable excuse to the Commission for the lack of timely notice, and because Defendant was prejudiced by Plaintiff's lack of timely notice. N.C. Gen. Stat. § 97-22 (2014).

Finding of Fact No. 3, which plaintiff does not challenge on appeal, provides that “[p]laintiff testified at the hearing before the deputy commissioner that during the early morning hours of *August 27, 2012*, . . . she experienced a sudden, severe pain in her low back while bending over the [Pyxis] machine” (Emphasis added). This date of injury is referenced in plaintiff's Form 18 *Notice of Accident to Employer* (completed on 17 April 2013) and Form 33 *Request that Claim Be Assigned for Hearing* (filed on 7 August 2013), neither of which was filed within thirty days of 27 August 2012.

Finding of Fact 8, which we have already determined is supported by competent evidence, *see supra* § II.A., states that “on October 26, 2012, [p]laintiff completed an Employee Incident Report notifying [d]efendant *for the first time* that she was contending that she suffered a work-related injury.” (Emphasis added). Nothing in the findings indicates a reasonable excuse was offered by plaintiff for her failure to give timely notice of a work-related accident or injury.

Thus, if plaintiff was injured on 27 August 2012, and notified defendant of the injury “for the first time” on 26 October 2012, almost two months (sixty days) later, the determinations made in Finding of Fact No. 14 that plaintiff could not have provided timely “actual or written notice to [d]efendant of the injury within 30 days” are supported by the evidence. These findings in turn support Conclusion of Law No. 4—that plaintiff failed to abide by the provisions of N.C.G.S. § 97-22 and is therefore barred from recovery. Plaintiff’s argument is overruled.

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).