

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Humphreys and Senior Judge Overton

EL PASO COAL CORPORATION/
COASTAL COAL COMPANY, LLC AND
UNDERWRITERS SAFETY & CLAIMS

v. Record No. 0235-04-3

DONALD L. CLARK, SR.

MEMORANDUM OPINION*
PER CURIAM
JUNE 15, 2004

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(John A. Martin; Kari Lou Frank; PennStuart, on briefs), for
appellants.

(D. Allison Mullins; Lee & Phipps, P.C., on brief), for appellee.

El Paso Coal Corporation/Coastal Coal Company, LLC and Underwriters Safety & Claims (hereinafter referred to as "employer") appeal a decision of the Workers' Compensation Commission awarding benefits to Donald L. Clark, Sr. for permanent partial disability pursuant to Code § 65.2-504. Employer contends the commission violated its procedural due process rights by awarding benefits to Clark for coal worker's pneumoconiosis based on interpretations of an x-ray taken of his chest on July 31, 2003 at the National Institute for Occupational Safety & Health (NIOSH), where the original of that x-ray was unavailable to employer.

We have reviewed the record and the commission's opinion and find no reversible error. We specifically note that the record neither indicates that employer ever requested that the original NIOSH x-ray be made available to the three physicians, who were B readers engaged by employer, for examination at ALOSH as provided under 42 C.F.R. § 37.80 (2003), nor

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

establishes that the B readers engaged by employer were ever actually denied access to the original x-ray. Accordingly, we affirm the commission's finding that Moore proved by a preponderance of the evidence that he suffered Stage 3 coal worker's pneumoconiosis, see Clark v. El Paso Coal, VWC File No. 212-63-00 (Dec. 31, 2003), and we also affirm the commission's denial of the employer's motion for reconsideration. We dispense with oral argument and summarily affirm because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. See Code § 17.1-403; Rule 5A:27.

Affirmed.