COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Bumgardner and Humphreys

AECOM TECHNOLOGY CORPORATION AND
AMERICAN INSURANCE COMPANY

MEMORANDUM OPINION*
PER CURIAM
AUGUST 1, 2000

v. Record No. 0352-00-4

WILLIAM FRANKLIN MASSEY

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Forest A. Nester; Brizendine, Bergen & Tripoda, on brief), for appellants.

(Robert A. Mordhorst; Mordhorst, Taweel & Adams, on brief), for appellee.

Aecom Technology and its insurer (hereinafter referred to as "employer") contend that the Workers' Compensation Commission erred in finding that William Franklin Massey (claimant) proved that the aggravation of his pre-existing spinal stenosis, his surgery, and his post-surgery disability were causally related to his compensable September 4, 1998 injury by accident. Upon reviewing the record and the briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the commission's decision. See Rule 5A:27.

On appeal, we view the evidence in the light most favorable to the prevailing party below. See R.G. Moore Bldg. Corp. v.

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* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). "The actual determination of causation is a factual finding that will not be disturbed on appeal if there is credible evidence to support the finding." Ingersoll-Rand Co. v. Musick, 7 Va. App. 684, 688, 376 S.E.3d 814, 817 (1989).

In ruling that claimant established a causal connection between the September 4, 1998 accident and his February 17, 1999 fusion surgery and subsequent disability, the commission found as follows:

> [W]e note that [orthopedic surgeon] Dr. [Robert] Squillante in his Attending Physician's report notes the incident of the claimant climbing on a ladder on September 4, 1998 and that he pulled his back that resulted in a spinal fusion with instrumentation at the L4-L5 level in February of 1999. While the claimant may have had previous problems with his back, an MRI lumbar spine of October 4, 1997, showed at the L4-5 level no herniated disc, central or foraminal stenosis. Likewise, when the claimant last saw Dr. Squillante prior to the accident on June 4, 1998, it was noted that he only had intermittent lumbar pain and had marked relief of the lower extremity pain. The claimant at that time was working full time and progressing nicely. He was not to return except on a per need basis. The claimant's uncontradicted testimony is that he was able to perform rather strenuous work from the date of this visit until the September 4, 1998, accident. The doctor's report on September 10, 1998, noted that the pain that the claimant was feeling was somewhat different than he had in the past. It is not until a September 23, 1998, MRI, that canal stenosis secondary to posterior facet and ligamentous hypertrophy is noted at the L4-L5 level.

Dr. Squillante's uncontradicted opinion regarding causation contained in his Attending Physician's report, coupled with claimant's medical records and his undisputed testimony that he was able to perform strenuous work from June 4, 1998 up until the September 4, 1998 accident, constitute credible evidence to support the commission's findings. Therefore, those findings are binding and conclusive upon us on appeal. "In determining whether credible evidence exists, the appellate court does not retry the facts, reweigh the preponderance of the evidence, or make its own determination of the credibility of the witnesses." Wagner Enters., Inc. v. Brooks, 12 Va. App. 890, 894, 407 S.E.2d 32, 35 (1991).

For these reasons, we affirm the commission's decision.

Affirmed.