

## COURT OF APPEALS OF VIRGINIA

Present: Judges Kelsey, Beales and Senior Judge Clements

VIKING CONTRACTING, INC. AND  
LIBERTY INSURANCE CORPORATION

v. Record No. 1701-12-4

MARIA ELENA ALIAGA

MEMORANDUM OPINION\*  
PER CURIAM  
JANUARY 8, 2013

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Alan D. Sundburg; Friedlander Mislner, PLLC, on brief), for  
appellants.

(Andrew S. Kasmer, on brief), for appellee.

Viking Contracting, Inc. and Liberty Insurance Corporation (employer) appeal a decision of the Workers' Compensation Commission finding that Maria E. Aliaga (claimant) was totally disabled and had no duty to market her residual work capacity.<sup>1</sup> We have reviewed the record and the commission's opinion and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Aliaga v. Viking Contracting, Inc., JCN VA000-0015-5292 (Aug. 24, 2012). We dispense with oral argument and summarily

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

<sup>1</sup> Claimant contends that the record fails to set forth when employer filed its notice of appeal. Although the notice of appeal was not included in the joint appendix, the record shows that employer filed a notice of appeal with the commission on September 25, 2012, sent via certified mail on September 21, 2012. Thus, the notice was timely filed.

Claimant also contends that employer failed to preserve the marketing issue before the full commission. The deputy commissioner found that claimant was totally disabled, therefore, she was under no obligation to market her residual ability. On July 13, 2011, employer filed a request for review before the full commission. In the request for review, employer claimed error with the finding that "claimant had no duty to market her residual capacity." The full commission found that a questionnaire signed by claimant's treating physician was sufficient to support claimant's ongoing disability. Employer preserved the issue.

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.