

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Clements and Senior Judge Annunziata

DOMINION VIRGINIA POWER AND  
DOMINION RESOURCES, INC.

v. Record No. 1709-08-1

CLEVELAND N. ROBERTSON

MEMORANDUM OPINION\*  
PER CURIAM  
DECEMBER 23, 2008

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Arthur T. Aylward; Angela F. Gibbs; Midkiff, Muncie & Ross,  
P.C., on briefs), for appellants.

(Kevin L. Hubbard; Albert R. Hartley; Hubbard and Hartley, P.C., on  
brief), for appellee.<sup>1</sup>

Dominion Virginia Power and Dominion Resources, Inc. (hereinafter collectively referred to as “employer”) appeal a decision of the Workers’ Compensation Commission. In its opening brief, employer presents seventeen questions. In its argument related to those questions, employer asserts that the commission erred in finding: (1) Cleveland N. Robertson’s (claimant) testimony was credible; (2) eyewitness Mike Casey’s testimony was not credible; (3) claimant’s

---

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

<sup>1</sup> On October 31, 2008, counsel of record for claimant as of that date, Kevin L. Hubbard and Hubbard and Hartley, P.C., filed an appellee’s brief on claimant’s behalf. On November 7, 2008, Kevin L. Hubbard filed a letter motion with this Court requesting that he and Hubbard and Hartley, P.C. be permitted to withdraw pursuant to claimant’s request made to Hubbard on November 3, 2008. In that letter and a document signed by claimant and filed with this Court on November 14, 2008, claimant requested that no briefs or any documentation be accepted or received by this Court on his behalf from Kevin L. Hubbard or Hubbard and Hartley, P.C. “at this time.” By order entered November 19, 2008, this Court granted the motion requesting that Kevin L. Hubbard and Hubbard and Hartley, P.C. be permitted to withdraw as counsel of record for claimant. However, because the appellee’s brief was filed on October 31, 2008, before claimant requested that his counsel be permitted to withdraw and before we granted that motion, we have considered the appellee’s brief in summarily affirming the commission’s decision.

claim was not barred by willful misconduct under Code § 65.2-306; (4) claimant proved he sustained a psychiatric injury as a result of his August 26, 2003 injury by accident; (5) the medical evidence supported claimant's claim for disability benefits; (6) claimant proved that all of his medical treatment after February 18, 2004 was causally related to the August 26, 2003 injury by accident; (7) claimant proved he adequately marketed his residual work capacity during the periods he was not totally disabled; and (8) employer failed to prove it was entitled to a credit for periods of vacation and sick pay made to claimant during various periods of total disability. 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 Robertson v. Dominion Virginia Power, VWC File No. 216-22-66 (June 17, 2008). 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.<sup>2</sup>

Affirmed.

---

<sup>2</sup> We deny claimant's Motion to File Appellee's Supplemental Appendix. In rendering our decision, however, we considered the evidence in the record and properly before the commission when it rendered its decision.