

COURT OF APPEALS OF VIRGINIA

Present: Judges Humphreys, O'Brien and Senior Judge Bumgardner

HOWARD CLUTE

v. Record No. 0252-15-2

BIG LOTS STORES, INC. AND  
ARCH INSURANCE COMPANY

MEMORANDUM OPINION\*  
PER CURIAM  
JUNE 9, 2015

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Michael J. Beste; Reinhardt Harper Davis, PLC, on brief), for  
appellant.

(Nicholas P. Marrone; Kathryn Lea Harman; Semmes, Bowen &  
Semmes, on brief), for appellees.

Howard Clute ("claimant") appeals the decision of the Workers' Compensation Commission ("commission") declining to award him disability benefits from August 19, 2013 and ongoing and by only awarding him disability benefits on August 19, 2013, which was the day of his right knee replacement surgery. On appeal, claimant argues the commission erroneously (1) held that he failed to sustain his burden of proof for an award of temporary total disability from August 19, 2013 and ongoing; and (2) declined to consider his testimony to prove his disability, but instead determined that it could only speculate as to a period of disability without medical records.<sup>1</sup> We have reviewed the record and the commission's opinion and find

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

<sup>1</sup> Big Lots Stores, Inc. and Arch Insurance Company argue claimant was not entitled to disability benefits for his right knee on August 19, 2013 because that claim was barred by the doctrine of res judicata. We have determined that the commission did not err in finding that claimant's claim for benefits for his right knee was not barred by res judicata. See Big Lots Stores, Inc. v. Clute, Record No. 0206-15-2.

that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its opinion. See Clute v. Big Lots Stores, Inc., JCN VA00000420654 (Jan. 14, 2015). 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.