

COURT OF APPEALS OF VIRGINIA

Present: Judges Annunziata, Agee and Senior Judge Coleman

OTIS L. TINSLEY, JR.

v. Record No. 0728-00-3

VIRGINIA MIRROR COMPANY, INC. AND
NATIONAL SURETY CORPORATION

MEMORANDUM OPINION*
PER CURIAM
FEBRUARY 27, 2001

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Otis L. Tinsley, pro se, on brief).

(Christopher M. Kite; Frith, Anderson &
Peake, P.C., on brief), for appellees.

Otis L. Tinsley (claimant) contends that the Workers' Compensation Commission erred in finding that he failed to prove that back surgery proposed by Dr. Joel Singer was causally related to his compensable June 11, 1996 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. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). Unless we can say as a matter of law that claimant's evidence sustained his burden of proof, the commission's findings are

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

binding and conclusive upon us. See Tomko v. Michael's Plastering Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

In ruling that claimant failed to prove that the proposed surgery was causally related to his compensable injury, the commission found as follows:

[W]e note Dr. [Matthew W.] Yates' MRI report, that shows a degenerative disc condition that is essentially unchanged from the previous June 21, 1996, study. Dr. Singer in his initial medical report, advised that the claimant had a new herniated disc at L4-5 and a recurrent herniated disc at L5-S1. His report of April 30, 1998, indicated that the claimant did not remember when this happened. This report makes no statement as to the causal connection to the industrial accident. Dr. Singer, however, in his May 13, 1998, letter written in response to a call from claimant, indicates that he meant in his previous report to say that the claimant did not have a new injury but a recurrent pain secondary to workers' compensation related herniated disc.

Based on the totality of the record, we cannot find that the doctor's subsequent statement sufficiently causally relates the claimant's need for surgery to his workers' compensation accident within the requisite degree of certainty. At best, the doctor indicates that the claimant is having recurrent pain secondary to a herniated disc. In view of the doctor's earlier note indicating that the claimant had a new herniated disc at L4-5, and without further explanation for his change in opinion to say there was no new injury, we cannot find that the claimant has established the requisite causal connection between the proposed surgery and the workers' compensation accident.

In its role as fact finder, the commission was entitled to weigh the medical evidence. The commission did so and articulated its reasons for giving little probative weight to Dr. Singer's inconsistent and ambiguous opinions. In light of these reasons, the commission was entitled to conclude that Dr. Singer's opinions did not constitute sufficient evidence to prove that the proposed surgery was causally related to claimant's compensable injury. "Medical evidence is not necessarily conclusive, but is subject to the commission's consideration and weighing." Hungerford Mechanical Corp. v. Hobson, 11 Va. App. 675, 677, 401 S.E.2d 213, 215 (1991).

Absent Dr. Singer's opinions, no evidence proved a causal connection between the proposed surgery and claimant's compensable June 11, 1996 injury by accident. Accordingly, we cannot find as a matter of law that claimant's evidence sustained his burden of proof.

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

Affirmed.