

COURT OF APPEALS OF VIRGINIA

Present: Judges Bumgardner, Humphreys and Senior Judge Hodges

JEFFREY L. WILLIAMS

v. Record No. 0905-02-4

MEMORANDUM OPINION*
PER CURIAM
AUGUST 27, 2002

GLOUCESTER (COUNTY OF) SHERIFF'S
DEPARTMENT AND VIRGINIA MUNICIPAL GROUP
SELF-INSURANCE ASSOCIATION

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Michael A. Kernbach; Burgess, Kernbach &
Perigard, PLLC, on briefs), for appellant.

(Ralph L. Whitt, Jr.; Whitt & Associates, on
brief), for appellees.

Jeffrey L. Williams (claimant) contends the Workers' Compensation Commission erred in (1) finding that the presumption under Code § 65.2-402(B) provides the presumed last injurious exposure, pursuant to Code § 65.2-404, in claims involving multiple employers; (2) presuming where the last injurious exposure occurred; and (3) finding there was sufficient credible medical evidence to support the conclusion that the last injurious exposure, pursuant to Code § 65.2-404, causing or contributing to the development of heart disease, occurred while claimant was employed with the Virginia Peninsula Regional Jail Authority, a non-presumptive employer pursuant to

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

Code § 65.2-402(B). Upon reviewing the record and briefs of the parties, we conclude claimant failed to preserve these issues for consideration on appeal. See Rule 5A:18. Accordingly, we summarily affirm the decision of the commission. See Rule 5A:27.

The deputy commissioner denied claimant's claim on the ground that the Gloucester (County of) Sheriff's Department ("employer") rebutted the statutory presumption contained in Code § 65.2-402(B). The deputy commissioner also determined the date of diagnosis of claimant's heart disease was August 5, 1997.

On review, the full commission affirmed the deputy commissioner, but on different grounds. The full commission found that no basis existed for bringing a claim against employer because claimant's last injurious exposure to the causative hazards of heart disease occurred while he was working for a different employer, the Virginia Peninsula Regional Jail.

Claimant did not file a motion for reconsideration after the full commission issued its decision on different grounds from the deputy commissioner nor did claimant request a rehearing in order to allow the commission the opportunity to correct the alleged error prior to appeal to this Court. Accordingly, claimant did not preserve the arguments he raises for the first time on appeal and, therefore, we cannot consider

them. See Henrico County Public Utilities v. Taylor, 34 Va. App. 233, 241 n.4, 540 S.E.2d 501, 506 n.4 (2001); Rule 5A:18.

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

Affirmed.