COURT OF APPEALS OF VIRGINIA

Present: Judges Humphreys, Beales and Senior Judge Fitzpatrick

AFGD GLASS/AFG INDUSTRIES, INC. AND
TRAVELERS INDEMNITY COMPANY OF
AMERICA

v. Record No. 1110-07-2

CLARENCE TURNER HEATH, JR.

MEMORANDUM OPINION*
PER CURIAM
OCTOBER 2, 2007

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Warren H. Britt; Anne C. Byrne; Warren H. Britt, P.C., on brief), for appellants.

(Jamie L. Karek; Geoffrey R. McDonald & Associates, P.C., on brief), for appellee.

AFGD Glass/AFG Industries, Inc. and its insurer (hereinafter referred to collectively as "employer") appeal a decision of the Workers' Compensation Commission finding that Clarence Turner Heath, Jr. (claimant) proved he sustained a traumatic brain injury and that he reasonably marketed his residual work capacity.[1] We have reviewed the record and the commission's

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

[1] Employer also argues that the commission erred in awarding claimant temporary total disability benefits from June 22, 2005 through June 30, 2005, a period for which he worked full-duty. While employer argued to the commission, on review, that claimant failed to adequately market his residual work capacity beginning June 22, 2005, it did not argue that claimant returned to full duty from June 22, 2005 through June 30, 2005, and therefore was not entitled to benefits for that period. Accordingly, we will not address that argument on appeal. See Rule 5A:18.

> Although Rule 5A:18 allows exceptions for good cause or to meet the ends of justice, appellant[s] [do] not argue that we should invoke these exceptions. See e.g., Redman v. Commonwealth, 25 Va. App. 215, 221, 487 S.E.2d 269, 272 (1997) ("In order to avail oneself of the exception, a *defendant*

opinion and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Heath v. AFGD Glass/AFG Industries, Inc., VWC File No. 218-86-41 (April 11, 2007). 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.

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must affirmatively show that a miscarriage of justice has occurred, not that a miscarriage might have occurred." (emphasis added)). We will not consider, *sua sponte*, a "miscarriage of justice" argument under Rule 5A:18.

Edwards v. Commonwealth, 41 Va. App. 752, 761, 589 S.E.2d 444, 448 (2003) (*en banc*).