

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Elder and Fitzpatrick

IN RE: JAMES B. FEINMAN

Record No. 1247-96-3

MEMORANDUM OPINION*
PER CURIAM
NOVEMBER 12, 1996

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(James B. Feinman; Esther S. McGuinn, on
brief), for appellant.

James B. Feinman contends that the Workers' Compensation Commission denied him due process by refusing to hear evidence regarding his request for a reasonable attorney's fee for representing Ernest Novello before the commission. Upon reviewing the record and opening brief, we conclude that this appeal is without merit. Accordingly, we summarily affirm the commission's decision. Rule 5A:27.

"Code § 65.1-102 [(now Code § 65.2-714)] provides that fees of attorneys shall be subject to the approval and award of the Commission." Hudock v. Industrial Comm'n, 1 Va. App. 474, 477, 340 S.E.2d 168, 171 (1986). The deputy commissioner awarded Feinman attorney's fees in the amount of \$850. Feinman did not seek review of this award; thus, it became final.

Employer sought review before the full commission on the narrow issues of whether employer failed to offer Novello a panel

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

of physicians and whether Dr. Haney was Novello's treating physician. Feinman filed a three-page written statement on review, which cited no legal authorities, but instead, recited witnesses' testimonies in support of Novello's position. The full commission affirmed the deputy commissioner's decision, but did not award Feinman any additional attorney's fees. Following the full commission's decision, Feinman moved for an award of attorney's fees in the amount of \$3,970.60, which equalled to twenty percent of the accrued compensation due Novello. Novello did not concur with Feinman's motion.

The full commission considered Feinman's motion and awarded him \$100 in additional attorney's fees. In so ruling, the commission held:

Given the narrow issue presented on Review, the essentially uncontested factual situation, and the fact that no authority is cited in [Feinman's] limited Review Brief, it would appear that little, if any, research was required. However, in light of the time required to prepare the Brief, we will approve an additional fee of \$100.00 for services rendered by [Feinman's] firm at the Review level.

Based upon this record, we find that the commission provided Feinman ample opportunity to present evidence concerning his attorney's fee request. Therefore, Feinman's due process argument is without merit. Moreover, although Feinman obtained a favorable result for Novello on review, the issue presented by employer was not complex, and the time and effort expended to oppose employer's review was not excessive. Accordingly, we find

that the commission did not abuse its discretion in fixing
Feinman's additional attorney's fee at \$100, effectively awarding
him a total attorney's fee of \$950.

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

Affirmed.