

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Beales and Senior Judge Annunziata

RUGO STONE, LLC AND  
INSURANCE COMPANY OF THE  
STATE OF PA

v. Record No. 1752-11-4

ANDRES A. DIAZ

MEMORANDUM OPINION\*  
PER CURIAM  
JANUARY 17, 2012

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Brandi R. Howell; Franklin & Prokopik, P.C., on brief), for  
appellants.

(Andrew S. Kasmer, on brief), for appellee.

Rugo Stone, LLC, and its insurer (collectively "employer") appeal a decision of the Workers' Compensation Commission. On appeal, employer contends the commission erred in finding that Andres Diaz (claimant) (1) sustained a change in condition with respect to his back injury and that he was disabled from June 26, 2009 and continuing, and (2) adequately marketed his residual earning capacity. Employer also claims that the commission erred in deferring to the opinion of claimant's doctor over that of employer's doctor in making its decision.<sup>1</sup>

We have reviewed the record and the commission's opinion and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Rugo Stone LLC v. Diaz, VWC File No. 237-58-68 (Aug. 5, 2011). We dispense

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

<sup>1</sup> Although employer included this claim as a separate assigned error, he failed to include a separate argument on this alleged error, which actually relates to the weight the commission, as fact finder, ascribed to the evidence from competing experts in ruling on the first two assigned errors.

with oral argument and summarily affirm because the facts and legal contentions are adequately presented in the materials before this Court and argument would not aid the decisional process.

See Code § 17.1-403; Rule 5A:27.

Affirmed.