

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

WILLIAM BYRD REED

v. Record No. 2212-95-1

MEMORANDUM OPINION\*  
PER CURIAM  
MARCH 26, 1996

DOUGHTIE'S FOODS, INC.  
AND  
HOME INDEMNITY COMPANY

FROM THE VIRGINIA WORKERS'  
COMPENSATION COMMISSION

(Alan P. Owens, on brief), for appellant.

(Robert A. Rapaport; Lynne M. Ferris;  
Knight, Dudley, Clarke & Dolph, on brief),  
for appellees.

William Byrd Reed ("claimant") contends that the Workers' Compensation Commission erred in finding that he failed to prove that his December 22, 1993 compensable injury by accident caused his back symptoms or an aggravation of his preexisting back condition. 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. Rule 5A:27.

On appeal, we view the evidence in the light most favorable to the prevailing party below. 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

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

sustained his burden of proof, the commission's findings are binding and conclusive upon us. Tomko v. Michael's Plastering Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

In holding that claimant failed to prove he sustained a back injury or an aggravation of a preexisting condition causally related to the December 22, 1993 injury by accident, the commission found as follows:

A review of the medical record reflects that there were no contemporaneous complaints of back pain from the fall on December 22, 1993. Indeed, the first report of back pain was on January 4, 1994, 13 days after the accident. Diagnostic studies revealed spondylolisthesis and spondylosis in the lumbar region, the same condition which was diagnosed following the industrial injury of October 20, 1992. The only physician who evaluated the claimant for both injuries, Dr. [Sterling R.] Williamson, [an orthopedic surgeon], opined that there was no correlation between the current back problems and the accident of December 22, 1993. He offered this opinion after performing an examination and after reviewing the medical records related to the December 1993 accident. Likewise, Dr. [Steven C.] Blasdell [an orthopedic surgeon] reached the same conclusion.

The commission also found that claimant's evidence did not prove he sustained an aggravation of his preexisting back condition as a result of the December 22, 1993 accident. In so ruling, the commission rejected the opinions of Drs. Harry J. Molligan and David L. Durica, orthopedic surgeons.

The medical records and opinions of Drs. Williamson and Blasdell support the commission's decision. The commission was

entitled to accept their opinions and to reject the contrary opinions of Drs. Molligan and Durica. "Questions raised by conflicting medical opinions must be decided by the commission."

Penley v. Island Creek Coal Co., 8 Va. App. 310, 318, 381 S.E.2d 231, 236 (1989).

Moreover, in its role as fact finder, the commission was entitled to determine what weight, if any, was to be given to Dr. Molligan's opinion. "It lies within the commission's authority to determine the facts and the weight of the evidence . . . ." Rose v. Red's Hitch & Trailer Servs., Inc., 11 Va. App. 55, 60, 396 S.E.2d 392, 395 (1990). Dr. Molligan based his opinion upon an inaccurate history, because he was under the impression that claimant's back complaints began contemporaneously with the December 22, 1993 accident. Where a medical opinion is based upon an incomplete or inaccurate medical history, the commission is entitled to conclude that the opinion is of little probative value. See Clinchfield Coal Co. v. Bowman, 229 Va. 249, 251-52, 329 S.E.2d 15, 16 (1985). In addition, the commission was entitled to find Dr. Williamson's opinion more persuasive than that of Dr. Durica. Dr. Williamson was the only physician who evaluated claimant after the October 1992 back injury and after the December 22, 1993 accident.

Based upon this record, we cannot find as a matter of law that claimant's evidence sustained his burden of proving that the December 22, 1993 injury by accident caused his back symptoms or

an aggravation of his preexisting back condition. Accordingly, we affirm the commission's decision.

Affirmed.