

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Huff and Senior Judge Haley

JOHN F. SPELLER

v. Record No. 1008-13-2

CERES MARINE TERMINALS, INC.
AND TOKIO MARINE AND NICHIDO
FIRE INSURANCE COMPANY, LTD.

MEMORANDUM OPINION*
PER CURIAM
OCTOBER 22, 2013

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Jean M. McKeen; Tomlin & McKeen, PLLC, on brief), for
appellant.

(Lawrence P. Postol; Seyfarth Shaw LLP, on brief), for appellees.

John F. Speller (hereinafter "claimant") appeals a decision of the Workers' Compensation Commission finding he failed to prove he sustained a closed head injury in his November 26, 2010 work accident. 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.¹ See Speller v. Ceres Marine Terminals, Inc., VWC File No. VA020-0000-4974 (Apr. 30, 2013). We dispense with oral argument and summarily affirm because the facts and

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

¹ In the first assignment of error, claimant asserts the commission erred by requiring him to offer proof beyond a reasonable doubt that he suffered a closed head injury on November 26, 2010, when the law required such proof only by a preponderance of the evidence. As appellant raises this issue for the first time on appeal, he has failed to preserve it for our review. Rule 5A:18. "Although Rule 5A:18 allows exceptions for good cause or to meet the ends of justice, appellant does not argue that we should invoke these exceptions [and] [w]e 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*).

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.