

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Coleman and Willis

RIGOBERTO C. GUTIERREZ

v. Record No. 0013-00-3

ESPINA STONE COMPANY AND
NORTH RIVER INSURANCE COMPANY

MEMORANDUM OPINION*
PER CURIAM
MAY 9, 2000

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(A. Thomas Lane, Jr., on brief), for
appellant.

(Lynn McHale Fitzpatrick; Siciliano, Ellis,
Dyer & Boccarosse, on brief), for appellees.

Rigoberto C. Gutierrez contends that the Workers' Compensation Commission erred in finding that medical treatment rendered to him by Dr. Alan Cason, a chiropractor, from September 11, 1997 through January 19, 1998 was not medically necessary and, therefore, Espina Stone Company was not responsible for the cost of such treatment. 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. See Rule 5A:27.

"[T]he question of whether the disputed medical treatment was necessary within the meaning of Code § 65.2-603 is a mixed

* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

question of law and fact." Lynchburg Foundry Co. v. Goad, 15 Va. App. 710, 712-13, 427 S.E.2d 215, 217 (1993).

In declining to hold employer responsible for the cost of Dr. Cason's chiropractic treatment, the commission found as follows:

The Deputy Commissioner found the opinions of Drs. [Gregory] Helm and [George] Godette to be persuasive, and concluded that the chiropractic treatment was not necessary after August 26, 1997. We agree. Dr. Helm stated on August 26, 1997, that continued chiropractic care was not necessary. Although Dr. Cason performed forty-four additional treatments from July 29, 1997 through January 19, 1998, he was unable to return [Gutierrez] to work. On February 3, 1998, Dr. Godette indicated that the chiropractic treatments were perpetuating the muscle injury. Dr. Godette was able to return [Gutierrez] to full-duty work in a short period of time. We also note that Dr. Cason had the opportunity to treat [Gutierrez] on seventy-five different occasions through July 22, 1997, but was unable to improve [Gutierrez's] condition to the extent that [he] could return to work. When considering the evidence as a whole, we agree with the Deputy Commissioner's conclusion that Dr. Cason's treatment after July 26, 1997, was not necessary

As fact finder, the commission was entitled to accept the opinions of Drs. Godette and Helm, which support the commission's finding that Dr. Cason's medical treatment after July 26, 1997 was not medically necessary. Moreover, we find no merit in Gutierrez's argument that he was entitled to continue with Dr. Cason's unauthorized treatment until January 19, 1998,

the day he selected Dr. Godette from a panel as his treating physician. Gutierrez was aware as early as August 1997 that Dr. Godette had opined that Dr. Cason's chiropractic treatment was not necessary and, as a result, was no longer authorized. Indeed, Gutierrez requested a new panel of physicians from employer. When Gutierrez discovered, however, that the new panel was defective, he chose to continue to treat with Dr. Cason, an unauthorized physician. The record contains no justification for Gutierrez's failure to choose a new treating physician or petition the commission for a change in treating physicians.

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

Affirmed.