

COURT OF APPEALS OF VIRGINIA

Present: Judges Kelsey, Petty and Senior Judge Bumgardner

MARTIN-BROWER COMPANY AND  
ACE AMERICAN INSURANCE COMPANY

v. Record No. 0079-07-4

DARREN L. JARRETT

MEMORANDUM OPINION\*  
PER CURIAM  
JUNE 12, 2007

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Joseph F. Giordano; Anne-Marie K. Zell; Semmes, Bowen &  
Semmes, on brief), for appellants. Appellants submitting on brief.

No brief for appellee.

The Martin-Brower Company and its insurer (hereinafter referred to as “employer”) appeal a decision of the Workers’ Compensation Commission finding that (1) the deputy commissioner did not abuse his discretion in refusing to hold the record open after the hearing for a *de bene esse* deposition of Geoffrey Phillips, the unavailable employer witness; (2) Darren L. Jarrett (claimant) proved he sustained an injury by accident arising out of and in the course of his employment on April 3, 2006; and (3) claimant proved he adequately marketed his residual work capacity and was, therefore, entitled to an award of temporary total disability benefits from April 4, 2006 through July 19, 2006. 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 Jarrett v. The Martin Brower Company, VWC File No. 228-19-28 (Dec. 8, 2006).

Affirmed.

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