

COURT OF APPEALS OF VIRGINIA

Present: Judge Humphreys, Senior Judges Hodges and Overton
Argued at Chesapeake, Virginia

FORD MOTOR COMPANY

v. Record No. 0112-05-1

WILLIAM K. FAVINGER

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
OCTOBER 11, 2005

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Barry Dorans (Samuel W. Meekins, Jr.; Wolcott, Rivers, Gates, P.C.,
on briefs), for appellant.

(Gregory E. Camden; Montagna Klein Camden, LLP, on brief), for
appellee.

Ford Motor Company (employer) appeals a decision of the Workers' Compensation Commission awarding William K. Favinger (claimant) temporary partial disability (TPD) benefits during certain periods of wage loss. Employer contends the commission erred in (1) awarding claimant TPD benefits for lost overtime where claimant failed to prove any wage loss causally related to his compensable injury; (2) not addressing the issue of claimant's failure to market his residual work capacity in order to recoup the lost overtime; and (3) calculating claimant's TPD benefits based upon the actual weekly wages claimant earned during certain weeks after his compensable injury as opposed to the average weekly wages claimant was able to earn post-injury. Pursuant to Rule 5A:21(b), claimant raises the additional question of whether the commission erred in denying him TPD benefits while he was on work restrictions due to his compensable injury and laid off by employer during two temporary plant-wide shutdowns.

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

Our review of the record indicates that the commission, upon review of the deputy commissioner's decision, failed to address the question raised by employer as to whether claimant adequately marketed his residual work capacity in order to recoup his lost overtime. Accordingly, we remand this matter to the commission for it to determine whether claimant adequately marketed his residual work capacity in order to recoup his lost overtime. Because we remand for a determination of that question, we do not address the additional assignments of error raised by employer and claimant.

Remanded.