

COURT OF APPEALS OF VIRGINIA

Record No. 0117-25-2

JAMES CONRAD
v.
FOOD LION #1463, ET AL.

Present: Chief Judge Decker, Judges Beales and Athey

Argued at Richmond, Virginia

Opinion Issued August 18, 2026*

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Philip J. Geib (Philip J. Geib, P.C., on brief), for appellant.

Steven H. Theisen (Midkiff, Muncie & Ross, P.C., on brief), for appellees.

MEMORANDUM OPINION BY JUDGE CLIFFORD L. ATHEY, JR.

The Virginia Workers' Compensation Commission ("Commission") denied James Conrad's ("Conrad") claim against Food Lion #1463 and its insurance carrier Delhaize America, LLC (collectively, "Food Lion"), for a lifetime medical award and temporary total disability benefits arising out of a cervical spine injury, finding that his claim was time-barred under Code § 65.2-601. On appeal, Conrad contends that he filed his claim within the statute of limitations. We disagree and therefore affirm the Commission.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

I. BACKGROUND¹

Injury, Diagnoses, and Treatment

On April 23, 2019, Conrad, a long-time Food Lion store employee, was working as an assistant manager at a store in Virginia Beach. While lifting a 75-pound case of floor mats from the top of a pallet of water, he sustained an injury when his “right arm fell to the floor, dropping the whole case.” He sought treatment at Patient First the next day and was referred to Atlantic Orthopaedic Specialists, where he was assessed by Dr. Bradley C. Carofino (“Dr. Carofino”) on May 1, 2019. After obtaining X-rays of the right shoulder and cervical spine, Dr. Carofino noted three diagnoses: cervicalgia; acute cervical radiculopathy; and a right rotator cuff tear. Based on the “radiographic findings” and the possibility of a “neurologic component,” Dr. Carofino ordered a right shoulder MRI and a cervical spine MRI to be completed before Conrad’s next appointment.

Conrad next visited Dr. Carofino on May 29, 2019, to review his MRI results. Dr. Carofino noted that Conrad had “a large rotator cuff tear” and “some significant cervical spine pathology,” to include “a central disk extrusion at C7” and “foraminal stenosis at C5-6.” Dr. Carofino recommended rotator cuff surgery. Based on the cervical spine pathology, Dr. Carofino also had Dr. David Clifford (“Dr. Clifford”), a cervical spine specialist, see Conrad the same day. Dr. Clifford recommended that Conrad have rotator cuff surgery before reevaluation of the cervical spine. Conrad underwent rotator cuff surgery on July 23, 2019. Later that month, Dr. Carofino noted Conrad’s work injury and diagnoses—“cervicalgia, cervical radiculopathy, and right rotator cuff tear”—on an FMLA questionnaire.

After meeting with Conrad for a follow-up appointment on December 4, 2019, Dr. Carofino noted that Conrad was progressing slowly from his surgery and had profound “external rotation

¹ Our recitation of the facts “construe[s] the evidence in the light most favorable to” Food Lion, “the prevailing parties before the Commission.” *Jeffreys v. Uninsured Emp. ’s Fund*, 297 Va. 82, 87 (2019).

weakness.” He further noted, “I am wondering if some of these symptoms are related to the cervical spine.” Conrad was also examined by Dr. Clifford the same day. Although Conrad denied neck pain, Dr. Clifford assessed Conrad as having cervicalgia and cervical radiculopathy. Dr. Clifford recommended right upper extremity electromyography (“EMG”) and right C6-C7 epidural steroid injections (“ESI”).

In January of 2020, Conrad underwent the EMG and followed up with both Dr. Clifford and Dr. Carofino. Regarding Conrad’s “significant dysfunction with the arm in regard to [his] ability to externally rotate and reach up in the air,” Dr. Carofino ordered a right shoulder MRI to rule out a rotator cuff re-tear. But he also noted that Conrad’s “cervical spine could be significantly causing” his problems. He encouraged Conrad to have the cervical spine ESI, which Conrad underwent on February 3, 2020. At a follow-up appointment after the MRI, Dr. Carofino recommended reverse arthroplasty, noting that Conrad “ha[d] a failed rotator cuff repair.”

Conrad next followed up with Dr. Clifford on March 11, 2020, telling him the first ESI was about 25% “helpful.” Dr. Clifford reviewed the EMG and noted that it “show[ed] a carpal tunnel on the right.”² Dr. Clifford’s impression was “[c]ervical spondylosis [sic] with bilateral upper extremity radiculopathy.” Dr. Clifford recommended a second ESI, which Conrad underwent on March 31, 2020. On April 8, 2020, Conrad reported to Dr. Clifford that he had no change after the second ESI and complained of “bilateral hand numbness.” Dr. Clifford noted impressions of “[m]oderate central stenosis C5-C6, C6-C7 herniated nucleus pulposus, and a right carpal tunnel.” Conrad later told Dr. Clifford during a July 8, 2020 visit that the ESI had “made him well” for about

² The physician who performed the EMG further explained in her report, “There is electrodiagnostic evidence of a mild right median neuropathy at the wrist (carpal tunnel) affecting the sensory components of the median nerve. This is consistent with carpal tunnel syndrome.”

six weeks and he was interested in another one.³ Dr. Clifford's impressions were "[c]ervical radiculopathy with a disk herniation at L5-6, L6-7, right-sided carpal tunnel." He wanted Conrad to follow up with Dr. Carofino for his carpal tunnel before seeing him again.

After Conrad attended a follow-up appointment regarding his "rotator cuff re-tear" with Dr. Carofino in July, Dr. Carofino performed his second surgery on Conrad's right shoulder on August 18, 2020. Following an appointment in November of 2020, Dr. Carofino recommended that Conrad return to Dr. Clifford for evaluation of his cervical spine due to "profound external rotation weakness," which he noted "c[ould] be from a cervical process." In January of 2021, Dr. Carofino repeated that Conrad should return to Dr. Clifford to have his cervical spine evaluated.

In February of 2021, Conrad had a third ESI and followed up with Dr. Clifford, reporting that he felt the third procedure had not provided any relief and actually "made it worse." Dr. Clifford noted that Conrad "ha[d] a known C5-6, C6-7 disk herniation" and acknowledged numbness and tingling through Conrad's right arm to his "index and long fingers and thumb." Further, he observed that Conrad presented with "significant weakness with external rotators, deltoid, abduction of the right arm." "[R]adiographs . . . obtained . . . while [Conrad] [wa]s in the office . . . show[ed] severe degenerative disk at C5-6." Dr. Clifford also noted that Conrad's "biggest concern was range of motion strength to [his] right arm that could be coming from the neck." He opined that Conrad "certainly ha[d] [two] disks that [we]re herniated from 2019" and ordered an EMG of the "bilateral upper extremities" and a repeat MRI.

On April 14, 2021, Conrad saw Dr. Carofino, who noted that much of Conrad's profound shoulder weakness could be related to spondylolysis and his transient numbness and tingling in his bilateral upper extremities could correlate to his neck. Conrad also saw Dr. Clifford concerning

³ Dr. Clifford noted in February of 2021 that it was the first ESI that gave Conrad relief for six weeks.

cervical radiculopathy on April 28, 2021, after both his MRI on March 14, 2021, and his EMG on April 6, 2021. Dr. Clifford recommended “a C5-6 and C6-7 anterior cervical discectomy.” On May 26, 2021, Conrad followed up with Dr. Carofino, who opined, “[Conrad] is at maximal improvement with regard to his shoulder. His ongoing issues in my opinion are related to his cervical pathology.”

On July 7, 2022, Dr. Clifford completed a questionnaire in which he indicated that he diagnosed Conrad with cervical radiculopathy, that the diagnosis was proximately related to the April 23, 2019 work accident, and that he communicated the diagnosis to Conrad in December of 2019. Conrad went to Dr. David Vincent (“Dr. Vincent”) with the Jordan-Young Institute for a second opinion on August 30, 2022, and Dr. Vincent recommended a “Cervical 5/6, 6/7 Anterior Cervical Discectomy and Fusion with Plating.” Dr. Vincent performed cervical surgery on Conrad on January 23, 2023.

Conrad’s Claims

Conrad first filed a claim for benefits arising out of the April 23, 2019 incident on May 4, 2019. Conrad stated that he had injured his right arm and shoulder, and he requested payment and reimbursement of his medical bills. Conrad filed another claim on May 7, 2019, claiming injury to the same body parts, but he did not specify any requests for benefits.⁴ In response to an inquiry from the Commission asking what benefits he was requesting, Conrad indicated he was seeking awards for medical benefits and lost time from work as well as “for [his] [i]njury to be covered for [his] [l]ifetime.” In September of 2019, Conrad and Food Lion entered into an award agreement based on Conrad’s right shoulder rotator cuff tear, with Food Lion agreeing to pay temporary total

⁴ As opposed to the May 4, 2019 claim, which was completed electronically, this later-filed claim was handwritten on the Commission’s “Claim Form” and signed by Conrad on April 30, 2019.

disability benefits beginning on July 23, 2019. The Commission subsequently entered an award in favor of Conrad on September 24, 2019.

In January of 2021, the parties entered into another award agreement based on the right shoulder injury, with Food Lion agreeing to pay temporary total disability benefits beginning on August 14, 2020. Thereafter, on January 28, 2021, the Commission amended its September 24, 2019 award to include temporary total disability benefits from August 14, 2020, through November 21, 2020.⁵

Conrad, by counsel, filed requests for hearing on August 12, 2021, and August 23, 2021, requesting, inter alia, medical and disability benefits for his cervical spine. Conrad applied for a hearing on his entitlement to an impairment rating on April 25, 2022, and subsequently withdrew his August 2021 requests for hearing the next day. On July 6, 2022, the Commission entered a stipulated order for “permanent partial disability associated with a 24% impairment rating assigned to [Conrad’s] right upper extremity,” noting the lifetime medical benefits award for a right shoulder rotator cuff tear.

In October of 2022, Conrad renewed his withdrawn August 2021 requests for hearing. Conrad filed additional requests for hearing in October and December of 2022, asking that Food Lion be held responsible for Dr. Vincent’s treatment, Conrad’s attorney fees and costs,⁶ and disability benefits due to Food Lion ceasing accommodation of his restrictions and “administratively separating as of December 19, 2022.”

⁵ The amended award order also altered the compensation rate provided in the September 24, 2019 order “based on a change in the pre-injury average weekly wage.” Additionally, the amended award order provided September 5, 2019, as the end-date for the temporary total disability benefits awarded beginning July 23, 2019.

⁶ Conrad later withdrew his claim for Food Lion to pay Conrad’s attorney fees at the hearing before the deputy commissioner.

Proceedings Before the Deputy Commissioner

On April 18, 2023, a deputy commissioner conducted a hearing on Conrad's claim for medical benefits for his cervical spine injury, temporary total disability benefits beginning on December 19, 2022, and vocational rehabilitation benefits. As relevant here, Food Lion defended the claim on the grounds that: 1) Conrad's cervical spine injury claim was barred by the statute of limitations under Code § 65.2-601; 2) Conrad was "not disabled or impaired to the extent alleged"; 3) Conrad's "[m]edical records d[id] not support the period of disability alleged"; 4) Conrad "fail[ed] to market [his] remaining work capacity"; and 5) Conrad had "not established entitlement to vocational rehabilitation." The deputy commissioner admitted in evidence medical records, Conrad's job-search log, and other documents, and Conrad testified in support of his claim.

Conrad testified that he never experienced "any cervical spine complaints or treatment" before the accident. He stated that in May of 2019, he told Dr. Carofino that he had both shoulder and neck pain and complained to both of his doctors about "numbness and tingling in [his] hands." He further confirmed that the doctors expressed concerns to him regarding a neck injury in May of 2019. Conrad also acknowledged that Dr. Carofino wanted him to see Dr. Clifford and that he, Conrad, understood Dr. Clifford to be a cervical spine specialist. Conrad testified that, by December of 2019, he knew he had a herniated disk in his neck. He further stated that in January of 2020, Dr. Clifford told him he had an injury to his neck and his shoulder—which Conrad interpreted as Dr. Clifford telling him that "[t]he shoulder injury was related to the spine." Conrad also relayed that Dr. Clifford told him in March of 2020 that he had damage to his cervical spine at "5, 6, and 7."

Conrad testified that he did not file a claim for his neck injury because he thought that it was covered by his shoulder injury claim. Conrad explained that he did not file an additional claim after he learned of the herniated disc in his neck "[b]ecause [he] thought it was all under one."

Continuing, he explained, “It came from the shoulder. So, why would I think I’d have to file for the neck?”

Relying on *Corporate Resource Management, Inc. v. Southers*, 51 Va. App. 118 (2008) (en banc), the deputy commissioner found that the statute of limitations was tolled and Conrad’s “claim for a cervical spine injury was timely filed” because Conrad’s “medical records contain[ed] documentation of cervical symptoms within two years of the injury”; Conrad “credibly testified that he did not file a claim for the neck injury sooner because he believed it was all coming from his shoulder”; and his “physicians were unable to identify the source of his cervical symptoms and attribute them to the April 23, 2019 work injury within the statutory period.” The deputy commissioner concluded that Conrad “ha[d] proven a causally related period of partial disability from December 19, 2022 through January 22, 2023,” noting that Conrad “reasonably marketed his residual capacity for work.” Further, the deputy commissioner found that Conrad “ha[d] . . . continuing total disability related to his cervical injury beginning on January 23, 2023, the date of his cervical fusion surgery.” The deputy commissioner awarded Conrad temporary total disability benefits “beginning December 19, 2022,” and lifetime medical benefits for his cervical spine injury.⁷

Review by the Commission

On review, the Commission reversed. Distinguishing *Southers*, the Commission found that Conrad’s cervical spine injury “was diagnosed and treated within the statute of limitations.” It further found it significant that the evidence did not “establish that [Conrad] suffered a cervical spine injury *rather than* a shoulder injury.” Finally, the Commission was unpersuaded by Conrad’s claim that he received no diagnosis of “a neck injury *caused by* the work accident until after the

⁷ The deputy commissioner also denied Conrad’s claim for vocational placement assistance as premature; neither party requested the full Commission to review that ruling.

running of the statute of limitations,” reasoning that 1) Conrad admitted he was aware of a disc herniation by 2019, 2) Conrad had “no pre-accident cervical spine problems,” and 3) Conrad’s testimony that he “believed a neck injury was covered by the medical award in place” was “incongruous” with Conrad being “unaware his neck injury was caused by the accident.”⁸ Hence, the Commission found Conrad’s “claims for a cervical spine injury barred” by the statute of limitations.

In reviewing Conrad’s claims for temporary total disability benefits, the Commission noted that Conrad was not entitled to such benefits by reason of his cervical spine injury but that he was “partially disabled due to his compensable shoulder injury during the period of compensation sought.” The Commission acknowledged that Dr. Carofino placed Conrad on “light duty restrictions,” which Food Lion ceased to accommodate as of December 19, 2022. But the Commission reversed the deputy commissioner’s award of benefits, finding that Conrad failed to adequately market his remaining work capacity. The Commission found that “the evidence d[id] not reflect a genuine search for light duty employment,” citing the online nature of Conrad’s job search and the “many jobs” he applied to “for which he was plainly not qualified.” Conrad appealed.

II. ANALYSIS

A. *Standard of Review*

“[W]hether a claim is barred by the statute of limitations is a question of law, which this Court reviews *de novo*.” *City of Newport News v. Kahikina*, 71 Va. App. 536, 542 (2020).

“Whether the information filed with the commission is sufficient to constitute a timely filed claim

⁸ The Commission also rejected Conrad’s equitable argument that he relied on assurances from a nurse case manager that his cervical spine injury was covered because those communications occurred after the limitations period had expired. Thus, the Commission reasoned, Conrad could not have relied on them in deciding not to file a claim. Conrad makes no equitable argument on appeal.

for a particular injury,” however, “is a question of fact, and the commission’s finding will not be disturbed on appeal if supported by credible evidence.” *Southers*, 51 Va. App. at 127; accord *Philip Morris USA v. Mease*, 62 Va. App. 190, 198 (2013). Indeed, an “award of the Commission . . . shall be conclusive and binding as to all questions of fact.” Code § 65.2-706(A). “If there is evidence or reasonable inference that can be drawn from the evidence to support the Commission’s findings, they will not be disturbed by this Court on appeal, even though there is evidence in the record to support contrary findings of fact.” *Jeffreys v. Uninsured Emp. ’s Fund*, 297 Va. 82, 87 (2019) (quoting *Caskey v. Dan River Mills, Inc.*, 225 Va. 405, 411 (1983)).

B. *The Commission did not err by concluding that Conrad’s claim was barred by the statute of limitations.*

Conrad contends that the Commission erred in concluding that the statute of limitations barred his claim because his shoulder injury claim, which was filed within the statutory period, qualifies as a timely filed cervical spine injury claim under *Southers*. In support, he avers that he did not know the origin of his symptoms was an injury to his cervical spine and remained unaware until the statutory period expired. In so arguing, Conrad suggests that the Commission’s finding that he was aware of the cervical spine injury diagnosis before the statutory period ended was unsupported by the record, particularly in light of the deputy commissioner’s credibility determination. We disagree.

“The right to compensation under [the Virginia Workers’ Compensation Act] shall be forever barred, unless a claim be filed with the Commission within two years after the accident.” Code § 65.2-601. “An employee must assert against his employer ‘any claim that he might have for any injury growing out of the accident’ within the two-year statute of limitations period found in Code § 65.2-601.” *Mease*, 62 Va. App. at 198 (quoting *Shawley v. Shea-Ball Constr. Co.*, 216 Va. 442, 446 (1975)). “[T]his provision is jurisdictional, and failure to file within the prescribed time

will bar a claim.” *Id.* (alteration in original) (quoting *Mayberry v. Alcoa Bldg. Prods.*, 18 Va. App. 18, 20 (1994)).

In *Shawley v. Shea-Ball Construction Co.*, 216 Va. at 446, our Supreme Court stated that the reason for the statute of limitations in the Workers’ Compensation Act “is a compelling one” and that the failure to file a claim for an “injury growing out of an accident” within the period prescribed by the statute of limitations “would seriously handicap the employer and the carrier in determining whether or not there was in fact an injury, the nature and extent thereof, and if related to the accident.” There, the Court held that a claimant who suffered an injury to his left foot and ankle failed to timely file his claim “for alleged back and right leg injuries” arising out of the same accident. *Id.* at 443, 446-47. Despite numerous medical examinations and reports, “neither the employer nor the carrier had any knowledge . . . for over 12 months that [the claimant]’s back or right ankle was involved, or that any claim for such injuries would ever be made against them.”⁹ *Id.* at 446-47. The Court reasoned that “[h]ad such injuries been caused by the . . . accident, and had claim been made therefor, appellees could have made proper investigation of the claim to determine its validity and the treatment necessary to effect a cure of the claimant and to minimize the employer’s liability.” *Id.* at 447.

By contrast, in *Southers*, 51 Va. App. at 129, this Court sitting en banc affirmed the Commission’s finding that the claimant’s cervical spine injury was encompassed by her shoulder injury award and not barred by the statute of limitations. There, the claimant suffered a fall resulting in neck and shoulder pain. *Id.* at 121. The claimant’s doctor ruled out a neck injury. *See id.* at 122, 131. The claimant subsequently obtained an award for a shoulder injury, but after the statute of limitations period expired, her new physicians determined that the symptoms—which had

⁹ In *Shawley*, 216 Va. at 445-47, 445 n.1, the Court applied the one-year statute of limitations in effect before “the period of filing a claim was extended to two years.”

remained consistent—emanated from “an injury to her cervical spine rather than her shoulder.” *Id.* at 123-24, 128.

The claimant’s employer opposed her change-in-condition application, arguing that the neck injury claim was barred by the statute of limitations. *Id.* at 124. The deputy commissioner found that the claim was not time-barred, reasoning that “[t]he claimant could not reasonably be expected to file a claim for a neck injury when none had been diagnosed, and we do not believe her claim is time-barred because a new physician now disagrees with the earlier diagnosis as to the etiology of her symptoms.” *Id.* at 125. The Commission agreed, reasoning that “*this is not a case involving injuries to two separate body parts but the same injury throughout the course of treatment, now presenting [as] an altered diagnosis.*” *Id.* at 125. The Commission also found that the claimant experienced “constant symptoms” that “manifested in shoulder pain.” *Id.* at 125.

The en banc majority of this Court found the claimant’s case distinguishable from *Shawley*, noting that the claimant at bar “consistently” complained of neck pain and “received timely medical attention for the affected, interrelated body parts and symptoms.” *Id.* at 129, 131. We found “credible evidence in the record” that supported “[t]he [C]ommission’s finding that [the] claimant’s cervical spine injury was encompassed by the award for her shoulder injury.” *Id.* at 129. In affirming the Commission, we quoted the Commission’s determination that

it was reasonable for the claimant to have relied on the treating physician’s diagnoses in seeking benefits relating to the shoulder contusion and it would be unreasonable to expect a claimant to file a claim for an injury to a body part [the neck], for the same symptoms for which the claimed diagnosis was made, for which her treating physician had not identified any specific injury.

Id. at 130 (alteration in original). We found it significant that before the limitations period had expired, the claimant’s original treating physician and an independent medical examiner both had been unsuccessful in determining the source of the claimant’s radiating shoulder pain and had “purported to *exclude* claimant’s cervical region as the source.” *Id.* at 131. We further opined that a

claimant “should not be penalized because her physicians were not initially successful in identifying the source of her symptoms, particularly in light of the lengthy break in her medical treatment caused by [her employer]’s dispute with its putative insurance carrier.” *Id.*

Southers therefore holds that the statute of limitations does not “bar benefits for the only chronic injury [a] claimant sustained” where the true source of the claimant’s injury goes undiscovered until after the statute of limitations has expired and the claimant has made a timely claim for an injury to an “interrelated body part[.]” *Id.* at 128, 131. That is not what happened in the case at bar.

Here, the Commission found that, unlike the claimant in *Southers*, Conrad did not “suffer[] a cervical spine injury *rather than* a shoulder injury,”¹⁰ instead concluding that he suffered two injuries with each being diagnosed and treated before the statute of limitations had expired. Credible evidence supports this finding. Before the limitations period lapsed, Conrad’s treating physicians identified and treated specific injuries to two separate body parts injured in the accident—a torn rotator cuff in the shoulder and cervical spine pathology. To wit, Conrad was not only diagnosed with a right shoulder rotator cuff tear; at various times prior to the running of the statute of limitations, Conrad’s treating physicians indicated that he had cervicgia, cervical radiculopathy, cervical spondylolysis, and various injuries to specific cervical disks. Further, Conrad’s rotator cuff treatment included two surgeries, and his cervical spine

¹⁰ Conrad suggests that the Commission erroneously construed *Southers* because the dissent stated that the claimant there suffered *two* injuries. To be sure, the claimant in *Southers* did also suffer a shoulder contusion, but she only suffered *one* injury that caused her to have chronic pain for which she claimed benefits—the injury to her neck. 51 Va. App. at 120-23, 128, 132-33.

treatment included multiple evaluations by a cervical spine specialist—Dr. Clifford—and several ESI treatments.¹¹

Moreover, the record supports the Commission’s finding that, unlike the claimant in *Southers*, Conrad was aware of a separate neck injury caused by the accident before the statute of limitations expired but *chose* not to file a separate claim. Dr. Clifford completed a questionnaire in July of 2022, indicating that he diagnosed Conrad with cervical radiculopathy, that the diagnosis was proximately related to Conrad’s work accident, and that he communicated the diagnosis to Conrad in December of 2019. Conrad testified that in December of 2019, he understood he had a herniated disk in his neck. Dr. Clifford told Conrad in March of 2020 that he had damage to his cervical spine at “5, 6, and 7.” And what is more, Conrad believed that his neck injury was covered by the claims filed for his shoulder. As the Commission noted, if Conrad was unaware that the accident caused his neck injury, there was no reason for him to believe that the existing medical award for his shoulder also covered the injury to his neck.¹²

¹¹ Conrad also likens himself to the claimant in *Southers* who experienced delays in her diagnosis resulting from circumstances out of her control. He emphasizes that the COVID-19 pandemic resulted in delays in his treatment, impeding the doctors’ pinpointing the source of his symptoms. But because Conrad was made aware of his doctors’ diagnoses of cervical pathology well within the statute of limitations period, we do not consider any delay to be of the same magnitude as that suffered by the claimant in *Southers*.

¹² Conrad suggests that the Commission erred by rejecting the deputy commissioner’s determination that Conrad “credibly testified that he did not file a claim for the neck injury sooner because he believed it was all coming from his shoulder.” But “[t]he Commission is not bound by the findings of a deputy commissioner.” *Hess v. Va. State Police*, 68 Va. App. 190, 194 n.1 (2017). While “a specific, recorded observation of a key witness’ demeanor or appearance in relation to credibility is an aspect of the hearing that the commission may not arbitrarily disregard,” *Goodyear Tire & Rubber Co. v. Pierce*, 5 Va. App. 374, 382 (1987), this “limited exception to the general rule has no application” when a deputy commissioner fails to “tie her resolution of the factual issues to the ‘demeanor or appearance’ of the witnesses,” *King William County v. Jones*, 65 Va. App. 536, 546 (2015). Here, the deputy commissioner made no such connection between Conrad’s presentation at the hearing and its credibility determination.

To be sure, there is ample evidence in the record that Food Lion was also aware of Conrad's separate injury before the statute of limitations, which satisfies one of the major concerns addressed by the enactment of the statute of limitations. *See Shawley*, 216 Va. at 446-47. But notice to the employer is not the sine qua non of a timely claim. As the Commission has stated,

That the employer was on notice of the injury is insufficient to immunize the claimant from the consequences for th[e] failure [to file a claim for that injury.] Were we to rule otherwise, then each timely reporting of an injury to the employer as mandated by Code § 65.2-600 would effect a corresponding waiver of the statute of limitations. Had the General Assembly intended that the Act's notice provision be so construed, it would have said so.

Douglas v. City of Richmond, JCN 2223422, slip op. at 5 (Va. Workers Comp. Comm'n Sept. 19, 2019); *see also Bay Concrete Constr. Co. v. Davis*, 43 Va. App. 528, 539 (2004) ("[W]e give great weight to the [C]ommission's construction of the [Workers' Compensation] Act.").

In this case, credible evidence supports the Commission's conclusion that Conrad's cervical spine injury claim was not encompassed by his shoulder injury claim. *See Mease*, 62 Va. App. at 203. Because Conrad was diagnosed with and aware of both distinct injuries before the statute of limitations expired, we conclude that this case is sufficiently distinguishable from our decision in *Southers* such that the statute of limitations barred Conrad's cervical spine injury claim. It was Conrad's duty to make a claim for "all injuries" in a timely manner to inform Food Lion "of [its] potential liability." *Shawley*, 216 Va. at 446. But while Conrad made a timely claim for his shoulder injury, he failed to notify Food Lion of his intent to make a claim for his cervical spine injury within the statute of limitations despite being aware of the separate and distinct injury. Therefore, we affirm the Commission's judgment.¹³

¹³ Regarding Conrad's second assignment of error, he argues only that he is entitled to disability benefits if this Court determined that his cervical spine injury claim was timely filed. His second assignment of error is therefore resolved by our ruling on the timeliness of his claim.

III. CONCLUSION

For the foregoing reasons, Conrad failed to timely file a claim for his cervical spine injury arising out of his April 23, 2019 work accident. Thus, the Commission's judgment is affirmed.

Affirmed.