

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Alston and Senior Judge Coleman

W.R. DEACON & SONS AND SEDGWICK
CLAIMS MANAGEMENT SERVICES, INC.

v. Record No. 0124-11-3

MEMORANDUM OPINION*
PER CURIAM
MAY 17, 2011

YVONNE HOWARD LEWIS (WIDOW),
STATUTORY BENEFICIARY OF EARNEST W. LEWIS

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Christopher M. Kite; Lucas & Kite, PLC, on brief), for appellants.

(Russell W. Updike; Nolan R. Nicely, Jr.; Wilson, Updike & Nicely,
on brief), for appellee.

W.R. Deacon & Sons and its insurer, Sedgwick Claims Management Services, Inc., (employer) appeal a December 21, 2010 decision of the Workers' Compensation Commission. The employer argues the commission erred in (1) improperly expanding the meaning of "willfulness" by requiring employer to demonstrate that the decedent, Earnest W. Lewis, knew his accident was foreseeable, and (2) characterizing the assumed willful violation of a known safety rule as justifiable.

We need not address the commission's analysis of "willfulness," nor whether the decedent had a valid reason for his inability to comply with the "alleged" safety rule, because the record supports the commission's findings, which read, in part:

We find that there was not sufficient evidence to determine what the parameters were of any alleged Mead Westvaco safety rule or that it enforced such a rule. The employer clearly wanted its employees to follow the rules of its customers, but it is unclear that

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

Mead Westvaco had a defined safety rule regarding operation of the dump switch or that the employer made Mr. Lewis aware of any particular safety rule of Mead Westvaco.

“Decisions of the commission as to questions of fact, if supported by credible evidence, are conclusive and binding on this Court.” TurfCare, Inc. v. Henson, 51 Va. App. 318, 324-25, 657 S.E.2d 787, 789 (2008) (quoting Basement Waterproofing v. Beland, 43 Va. App. 352, 358, 597 S.E.2d 286, 289 (2004)). Furthermore, as long as credible evidence supports the commission’s finding, “the fact that there is contrary evidence in the record is of no consequence.” Franklin Mortgage Corp. v. Walker, 6 Va. App. 108, 110-11, 367 S.E.2d 191, 193 (1988) (en banc). “In determining whether credible evidence exists, the appellate court does not retry the facts, reweigh the preponderance of the evidence, or make its own determination of the credibility of the witnesses.” Jules Hairstylists, Inc. v. Galanes, 1 Va. App. 64, 69, 334 S.E.2d 592, 595 (1985).

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 Lewis v. W.R. Deacon & Sons, VWC File No. VA000-0011-5074 (Dec. 21, 2010). We dispense with oral argument and summarily affirm because the facts and 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.