

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Elder and Fitzpatrick

GWYNNE STRICKLAND

v. Record No. 0224-97-2

MEMORANDUM OPINION*

PER CURIAM

JUNE 17, 1997

CACIQUE AND
TRAVELERS INDEMNITY COMPANY
OF ILLINOIS

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Brien A. Roche; Johnson & Roche, on brief),
for appellant.

(Elizabeth A. Zwibel; Siciliano, Ellis, Dyer &
Boccarosse, on brief), for appellees.

Gwynne Strickland (claimant) contends that the Workers' Compensation Commission (commission) erred in finding that Cacique (employer) proved that claimant's lower back complaints and any resulting disability were not causally related to her compensable May 28, 1994 injury by accident. 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. Rule 5A:27.

On appeal, we view the evidence in the light most favorable to the prevailing party below. See R.G. Moore Bldg. Corp. v. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990).

"General principles of workman's compensation law provide that
'[i]n an application for review of any award on the ground of

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

change in condition, the burden is on the party alleging such change to prove his allegations by a preponderance of the evidence.'" Great Atl. & Pac. Tea Co. v. Bateman, 4 Va. App. 459, 464, 359 S.E.2d 98, 101 (1987) (quoting Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App. 435, 438-39, 339 S.E.2d 570, 572 (1986)). Factual findings made by the commission will be upheld on appeal if supported by credible evidence. See James v. Capitol Steel Constr. Co., 8 Va. App. 512, 515, 382 S.E.2d 487, 488 (1989).

Claimant's treating orthopedic surgeon, Dr. Joseph D. Linehan, opined that claimant's "low back pain is in no way related to her cervical injury of 5/28/94." Dr. Linehan's medical records and opinions constitute credible evidence to support the commission's decision. "The fact that there is contrary evidence in the record is of no consequence if there is credible evidence to support the commission's finding." Wagner Enters, Inc. v. Brooks, 12 Va. App. 890, 894, 407 S.E.2d 32, 35 (1991).

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

Affirmed.