

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judges Frank and Clements

NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY

v. Record No. 0505-04-1

JAMES J. PRESTON

MEMORANDUM OPINION\*  
PER CURIAM  
JUNE 22, 2004

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Benjamin M. Mason; Mason, Mason, Walker & Hedrick, P.C., on  
brief), for appellant.

(John E. Robins, Jr.; Stephen F. Forbes; Forbes & Broadwell, on  
brief), for appellee.

Newport News Shipbuilding and Dry Dock Company (employer) appeals a decision of the Workers' Compensation Commission awarding temporary total disability benefits, temporary partial disability benefits, and medical benefits to James J. Preston (claimant), and finding that (1) claimant was entitled to a *de facto* award, and therefore had no duty to market his residual work capacity; (2) claimant did not unjustifiably refuse vocational rehabilitation efforts; and (3) he did not unjustifiably refuse selective employment. We have reviewed the record and the commission's opinion and find no reversible error. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Preston v. Newport News Shipbuilding & Dry Dock Company, VWC File No. 210-67-33 (Feb. 3, 2004).<sup>1</sup> We dispense with oral argument and

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

<sup>1</sup> We note that employer argues that the commission erred in awarding claimant temporary total disability benefits from September 3, 2002 through October 6, 2002, because the evidence proved that he was taking class at the Apprentice School during that period and was being paid for his work. Thus, employer contends that claimant was entitled to, at most,

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.

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temporary partial disability benefits during that period of time. Employer did not raise this argument before the commission. Therefore, we will not consider it for the first time on appeal. See Rule 5A:18.