

COURT OF APPEALS OF VIRGINIA

Present: Judges Kelsey, Beales and Senior Judge Clements

PHILLIP SHEETZ

v. Record No. 0714-13-3

JAMES E. SERKEL, INC. AND
CINCINNATI INSURANCE COMPANY

MEMORANDUM OPINION*
PER CURIAM
AUGUST 13, 2013

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Derrick W. Whetzel; BotkinRose, PLC, on briefs), for appellant.

(Robert M. Himmel; Lucas & Kite, PLC, on brief), for appellees.

Phillip Sheetz appeals a decision of the Workers' Compensation Commission finding (1) his claim was waived and abandoned because he failed to timely file a written statement on review to the full commission from the decision of the deputy commissioner, and (2) even if he had not waived and abandoned his claim, he failed to prove he suffered an injury by accident that arose out of the employment. On appeal, Sheetz contends he did meet his burden of proof.

We have reviewed the record and the commission's opinion and find that this appeal is without merit. Accordingly, we affirm on the first ground stated by the commission in its final opinion; i.e., that Sheetz waived and abandoned his claim. See Sheetz v. James E. Serkel, Inc., VWC File No. VA00000525601 (Mar. 14, 2013). The remainder of the commission's opinion is *dictum*, and we do not consider or adopt it. We dispense with oral argument and summarily

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

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.