

COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Clements and Haley

HOME DEPOT USA, INC. AND  
AMERICAN HOME ASSURANCE COMPANY

v. Record No. 0778-05-4

MICHAEL JOHN DAVIDSON

MEMORANDUM OPINION\*  
PER CURIAM  
AUGUST 23, 2005

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Richard M. Reed; Semmes, Bowen & Semmes, on brief), for  
appellants.

(Andrew S. Kasmer, on brief), for appellee.

Home Depot USA, Inc. and its insurer (hereinafter referred to as “employer”) appeal a decision of the Workers’ Compensation Commission finding that Michael J. Davidson (claimant) proved he made adequate efforts to market his residual work capacity beginning July 31, 2003.<sup>1</sup>

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

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

<sup>1</sup> In its brief, employer requests that this Court reverse the commission’s decision and find that claimant is not entitled to temporary partial disability benefits for the period of July 31, 2003 and continuing. Employer asserts in Question Presented 1 that the commission erred in finding that claimant cured a refusal of employer’s offer of selective employment. Employer cites to the commission’s February 25, 2005 opinion as the place where employer preserved this issue for appellate review. However, our review of the commission’s February 25, 2005 opinion and the record in its entirety does not reveal that employer raised the precise issue set forth in Question Presented 1 before the commission or that the commission ever addressed that issue. In fact, the commission specifically found that employer never raised a Code § 65.2-510 affirmative defense as to the time frame after July 31, 2003. The only issue raised by employer with respect to an unjustified refusal of selective employment pertained to the time period from March 25, 2003 through April 22, 2003. Accordingly, we will not consider employer’s Question Presented 1 on appeal. See Rule 5A:18.

Davidson v. Home Depot USA, Inc., VWC File No. 212-77-48 (Feb. 25, 2005). 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.