

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Bumgardner and Humphreys

BURLINGTON INDUSTRIES, INC. AND
RELIANCE NATIONAL INDEMNITY COMPANY

v. Record No. 0900-00-3

REBECCA P. GOLDA

MEMORANDUM OPINION*

PER CURIAM

AUGUST 15, 2000

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Gregory T. Casker; Daniel, Vaughan, Medley &
Smitherman, P.C., on brief), for appellants.

(Stephen G. Bass; Carter, Craig, Bass,
Blair & Kushner, P.C., on brief), for
appellee.

Burlington Industries, Inc. and its insurer (hereinafter referred to as "employer") contend that the Workers' Compensation Commission erred in calculating Rebecca A. Golda's (claimant) pre-injury average weekly wage. Employer argues that "exceptional reasons" exist pursuant to Code § 65.2-101(1)(b), which required the commission to use a method other than considering claimant's earnings for the fifty-two weeks before her industrial injury. 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. See Rule 5A:27.

* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

It [is] the duty of the Commission to make the best possible estimate of future impairments of earnings from the evidence adduced at the hearing, and to determine the average weekly wage This is a question of fact to be determined by the Commission which, if based on credible evidence, will not be disturbed on appeal.

Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App. 435, 441, 339 S.E.2d 570, 573 (1986).

"The commission is guided by statute in determining average weekly wage." Dominion Assocs. Group, Inc. v. Queen, 17 Va. App. 764, 766, 441 S.E.2d 45, 46 (1994). Code § 65.2-101 defines "average weekly wage" as follows:

1.a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two When the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. . . .

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

(Emphasis added.) "The reason for calculating the average weekly wage is to approximate the economic loss suffered by an employee . . . when there is a loss of earning capacity because

of work-related injury" Bosworth v. 7-Up Distrib. Co.,
4 Va. App. 161, 163, 355 S.E.2d 339, 340 (1987) (citations
omitted).

Claimant worked as a fabric inspector for employer. She
planned to retire from her job on July 24, 1998. However, on
July 20, 1998, she sustained a compensable injury to her right
shoulder while at work. As a result, she moved her retirement
date to July 23, 1998. Claimant planned to take a few weeks off
after her retirement and then seek part-time work.

The parties stipulated that claimant was totally disabled
due to her compensable injury as of April 7, 1999. The
commission awarded claimant temporary total disability benefits
beginning April 7, 1999 based upon her pre-injury average weekly
wage.

Employer argues that claimant's voluntary retirement after
her injury precluded her from receiving benefits based upon her
pre-injury average weekly wage. In finding no merit in this
argument, the commission held as follows:

[E]mployer cites no statute or case law in
support of its argument. Workers'
compensation benefits are intended to
compensate the claimant for wage loss
resulting from a compensable accident. Her
voluntary retirement from the employer does
not remove or diminish her ability to earn
wages. However, being temporarily and
totally disabled does prevent the claimant
from earning wages. Therefore, she is
entitled to temporary total disability
benefits based on her preinjury average
weekly wage.

The commission's holding is consistent with the definition of "average weekly wage" contained in Code § 65.2-101, case law, and the overall purpose of workers' compensation. We agree with the commission that there is no support in the statutes or case law for employer's argument. The record contained adequate information to calculate claimant's pre-injury average weekly wage as the commission used her earnings over the fifty-two week period before the date of her injury. Furthermore, nothing in the record established that the fifty-two-week calculation failed to reflect what claimant was capable of earning, but for the July 20, 1998 injury by accident.

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

Affirmed.