

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Clements and Senior Judge Annunziata

EMERITUS CORPORATION D/B/A
WILBURN GARDENS AND COMMERCE AND
INDUSTRY INSURANCE COMPANY

v. Record No. 0929-06-2

ELIZABETH ANN SMYTHERS

MEMORANDUM OPINION*
PER CURIAM
AUGUST 15, 2006

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(S. Vernon Priddy III; Sands Anderson Marks & Miller, P.C., on
briefs), for appellants.

(Wesley G. Marshall, on brief), for appellee.

Emeritus Corporation d/b/a Wilburn Gardens and its insurer (hereinafter referred to as “employer”) appeal a decision of the Workers’ Compensation Commission finding that (1) Elizabeth Ann Smythers (claimant) did not unjustifiably refuse an offer of light-duty work procured by employer; and (2) she adequately marketed her residual work capacity during the time period claimed. Employer also contends (1) it was denied due process when the commission refused to vacate its review opinion and permit employer to submit a supplemental written statement; and (2) the commission erred in addressing and reversing the deputy commissioner’s finding that claimant unjustifiably refused selective employment when that issue was not raised on review by the parties. Pursuant to Rule 5A:21(b), claimant raises the additional questions of whether the commission erred in (1) failing to find that any unjustified refusal of selective employment by claimant was cured; (2) failing to find that claimant’s wage

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

loss after attempting to resume her work was the result of employer's failure to restore her to her position, rather than any unjustified refusal of selective employment; and (3) failing to find that any refusal of selective employment was justified. We have reviewed the record and the commission's opinion and find that employer's appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Smythers v. Wilburn Gardens/Emeritus Corporation, VWC File No. 219-37-69 (Mar. 7, 2006).¹ 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.

¹ Because we summarily affirm the commission's decision with respect to the questions raised by employer, we need not address the additional questions raised by claimant.