

COURT OF APPEALS OF VIRGINIA

Record No. 0962-25-4

BRIEN O. HILL

v.

REGAL ENTERTAINMENT A/K/A CROWN, ET AL.

Present: Judges Raphael, Lorish and Frucci

Argued at Arlington, Virginia

Opinion Issued August 25, 2026*

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Brien O. Hill, *pro se*.

K. Elizabeth O'Dea (Noah S. Lowe; PennStuart, on brief), for appellees.

MEMORANDUM OPINION BY JUDGE STEVEN C. FRUCCI

Brien Hill injured his leg at his place of work, resulting in damage to his leg prosthesis. He filed a claim with the Workers' Compensation Commission based on the incident seeking, among other things, a replacement of his prosthesis. The deputy commissioner and, subsequently, the full Commission denied Hill's request. Hill now appeals, arguing that the Commission erred by: (1) denying his claim for prosthesis replacement; (2) failing to consider evidence of his "ongoing work duties and employer accommodations necessitated by the damaged prosthesis;" and (3) "refusing to admit into evidence a replacement prescription." Finding no error, we affirm the Commission's decision.¹

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ On September 23, 2025, appellees filed an amended motion to dismiss the appeal. We deny the motion.

BACKGROUND

On appeal we view the evidence in the light most favorable to Regal Entertainment a/k/a Crown and AIU Insurance Co. (“Regal”), the prevailing party before the Commission. *Berghund Chevrolet, Inc. v. Landrum*, 43 Va. App. 742, 746 (2004).

While at work on June 27, 2023, Hill, a manager at one of Regal’s movie theaters, was exiting the kitchen area when he slipped on some wet floor and his leg prosthesis struck a rack, causing damage to his prosthesis. Specifically, the pylon portion of the prosthesis attaching the foot to the leg broke as a result of the incident. Hill did not miss any time from work other than leaving work two hours early on the date of the injury.

On July 19, 2023, Hill filed a claim with the Commission seeking wage loss replacement; compensation for permanent loss; and payment/reimbursement for medical bills, mileage/transportation, and prescriptions. On the same day he filed his claim, Hill was examined by Dr. Marc Chodos, an orthopedic surgeon. Dr. Chodos completed an Attending Physician’s Report (the “October 25, 2023 APR”) and filled out a referral. The October 25, 2023 APR stated, in relevant part:

Findings: “Prosthetic leg broken as a result of work-related slip/fall”

Diagnosis: “Traumatic amputation of left leg”

Nature of treatment: “Prescribed repair vs replacement of prosthesis”

Recommended assistive medical devices: “Needs prosthesis fixed”²

² This recommendation appears in a July 19, 2023 physician’s statement. The October 25, 2023 APR explains that whether Hill had then reached maximum medical improvement was unknown and dependent on Hill’s prosthesis being fixed.

The referral stated the diagnosis was “Left traumatic BKA³ history” and contained a handwritten note that said “Broken BKA prosthesis.”

On August 22, 2023, Hill’s prosthesis was repaired at Orthotic Prosthetic Center. Months later, on January 10, 2024, Hill received a referral from Dr. Eric Marshall, who specializes in family medicine. The referral from Dr. Marshall referred Hill to Medical Center Orthotics & Prosthetics but did not include an evaluation or diagnosis.

After a hearing before the deputy commissioner on September 24, 2024, the Commission entered an award in favor of Hill “for medical benefits pursuant to Virginia Code § 65.2-603 for as long as necessary for reasonable, necessary, authorized, and causally related treatment for injuries [Hill] sustained to left leg, to specifically include repair of [Hill’s] left leg prosthesis broken in the June 27, 2023 accident.” The deputy commissioner found that:

Although the record includes a service estimate from Orthotic Prosthetic Center dated August 21, 2024, indicating a cost estimate of \$27,536.73 to replace the claimant’s entire left leg prosthesis, the record does not preponderate in establishing that replacing the left leg prosthesis resulted from the subject June 27, 2023, injury by accident. Neither Dr. Chodos nor Dr. Marshall have indicated as such, and the claimant’s testimony in this regard was that the employer allegedly overworked him for two months after June 27, 2023, and that this period of overwork resulted in the need for his prosthesis to be replaced. We therefore determine that the claimant’s June 27, 2023, injury by accident resulted in damage to his left leg prosthesis requiring that it be repaired but that the record does not preponderate in establishing that the injury resulted in the need for replacing the prosthesis.

Hill appealed the decision, arguing that the award was “insufficient to cover [his] medical expenses.” Specifically, Hill took issue with the fact that the award did not provide for medical benefits for the replacement of the prosthesis.

³ BKA is an acronym for “below knee amputation.”

On May 13, 2025, the Commission issued an opinion affirming the decision of the deputy commissioner. In its opinion, the Commission stated that it did not consider any documentary evidence submitted by Hill after the closure of the hearing record. The Commission held that “[m]uch of the documentary evidence submitted by [Hill] is dated prior to the hearing” and Hill “presented no persuasive explanation for why it could not have been obtained prior to the hearing.” As such, the Commission considered the evidence that was made part of the hearing record. The Commission agreed with the deputy commissioner that “the evidence does not support a finding that replacement of [Hill’s] left leg prosthesis was necessary as a result of the June 27, 2023 slip and fall.” In explaining its decision, the Commission stated that

[t]here is no dispute that the claimant’s prosthesis was broken in the accident. Dr. Chodos recommended “repair vs. replacement” of the prosthesis due to the damage. The claimant’s prosthesis was repaired in August 2023. There is no evidence that Dr. Chodos subsequently evaluated the claimant and recommended a replacement. Dr. Marshall referred the claimant to a prosthetics provider in January 2024, but the reason for this referral is not in the record. While the claimant was subsequently given an estimate for the cost of replacing the prosthesis, the record contains no opinion from a medical provider that the replacement was needed due to the accident. We cannot base an award on conjecture or speculation.

Hill appeals.

ANALYSIS

I. The Commission did not err in refusing to admit the July 19, 2023 prescription into evidence.

The four requirements which must be met before the record will be reopened on the basis of after-discovered evidence are that: (1) the evidence was obtained after the hearing; (2) it could not have been obtained prior to [the] hearing through the exercise of reasonable diligence; (3) it is not merely cumulative, corroborative or collateral; and (4) it is material and should produce an opposite result before the commission.

Georgia-Pacific Corp. v. Dancy, 24 Va. App. 430, 438-39 (1997) (alteration in original) (quoting *Williams v. People's Life Ins. Co.*, 19 Va. App. 530, 532 (1995)). Hill fails to meet the second requirement.

Hill states that Dr. Chodos issued the prescription on July 19, 2023, but contends that it was not available at the time of the hearing on September 24, 2024. In support of this contention, Hill vaguely asserts that he “did not have possession of this documentation at the time of the hearing, despite exercising reasonable diligence. The document was obtained only after follow-up with the prosthesis provider post-hearing.” Hill does not proffer any facts as to why a prescription dated July 19, 2023, that was used for an operation on August 22, 2023, was not made available until over a year later after the hearing on September 24, 2024. Further, Hill fails to provide examples of the reasonable diligence he exercised in trying to obtain the July 19, 2023 prescription prior to the hearing. Hill’s brief is devoid of any facts or argument establishing that the July 19, 2023 prescription could not have been obtained prior to the hearing through the exercise of reasonable diligence. *See Georgia-Pacific Corp.*, 24 Va. App. at 438-39. As such, Hill fails to meet the second requirement to reopen the record.

Accordingly, the Commission did not err in refusing to admit the July 19, 2023 prescription into evidence.

II. The Commission did not err in denying Hill’s claim for prosthesis replacement.

Code § 65.2-603(A)(1) provides that for “[a]s long as necessary after an accident, the employer shall furnish or cause to be furnished . . . necessary medical attention.” Code § 65.2-603(A)(2) requires employers to “repair, if repairable, . . . artificial limbs, or other prosthetic or orthotic devices damaged in an accident otherwise compensable under workers’ compensation, and furnish proper fitting thereof.”

This Court has interpreted the workers' compensation statutes as creating a duty for an employer to compensate an injured employee for medical expenses causally related to the injury but has also emphasized that any recommended treatment must be "reasonable, necessary, and related to the industrial accident." *Dunrite Transmission v. Sheetz*, 18 Va. App. 647, 649 (1994). When a claimant requests specific medical treatment, they must demonstrate that the treatment "is causally related to the accident, is necessary for treatment of his compensable injury, and is recommended by an authorized treating physician." *Portsmouth (City of) Sch. Bd. v. Harris*, 58 Va. App. 556, 563 (2011).

"On appeal, the Commission's findings of fact are conclusive and binding upon us if they are supported by credible evidence." *Clinchfield Coal Co. v. Bowman*, 229 Va. 249, 251 (1985). "The determination of proximate cause between an injury and the industrial accident is a factual finding conclusively binding on appeal if supported by credible evidence." *Volvo White Truck Corp. v. Hedge*, 1 Va. App. 195, 199 (1985). Appellate courts "do not retry the facts before the Commission nor do we review the weight, preponderance of the evidence, or the credibility of witnesses." *Caskey v. Dan River Mills, Inc.*, 225 Va. 405, 411 (1983). "If there is evidence or reasonable inference that can be drawn from the evidence to support the Commission's findings, they will not be disturbed by this Court on appeal, even though there is evidence in the record to support contrary findings of fact." *Id.*

Here, the Commission's findings are supported by credible evidence. Dr. Chodos recommended "repair vs. replacement" of the prosthesis in July 2023. Dr. Marshall later referred Hill to a prosthetics provider in January 2024, but the reason for this referral is not in the record. While the record does contain an estimate for the cost of replacing the prosthesis, the record does not include an opinion from a medical provider that the replacement was needed due to the accident. As such, Hill's contention that the medical prescriptions from Dr. Chodos and Dr. Marshall

establish that replacement of the prosthesis is medically necessary is completely unsupported by the record. On the other hand, for the reasons stated above, “there is evidence or reasonable inference” supporting the Commission’s findings that repair of the prosthesis was medically necessary.

Caskey, 225 Va. at 411.

Therefore, the Commission did not err in denying Hill’s claim for prosthesis replacement.

III. Hill’s remaining assignment of error is waived pursuant to Rule 5A:20(e).

“Rule 5A:20(e) requires that an appellant’s opening brief contain ‘[t]he principles of law, the argument, and the authorities relating to each question presented.’” *Bartley v. Commonwealth*, 67 Va. App. 740, 744 (2017) (alteration in original) (quoting *Jones v. Commonwealth*, 51 Va. App. 730, 734 (2008)). “Unsupported assertions of error ‘do not merit appellate consideration.’” *Id.* (quoting *Jones*, 51 Va. App. at 734). As we have repeatedly held:

[a] court of review is entitled to have the issues clearly defined and to be cited pertinent authority. The appellate court is not a depository in which the appellant may dump the burden of argument and research. To ignore such a rule by addressing the case on the merits would require this court to be an advocate for, as well as the judge of the correctness of, [appellant’s] position on the issues he raises. On the other hand, strict compliance with the rules permits a reviewing court to ascertain the integrity of the parties’ assertions which is essential to an accurate determination of the issues raised on appeal.

Id. (alterations in original) (quoting *Jones*, 51 Va. App. at 734-35). “Furthermore, ‘when a party’s “failure to strictly adhere to the requirements of Rule 5A:20(e)” is significant,’ this Court may treat the question as waived.” *Id.* (quoting *Parks v. Parks*, 52 Va. App. 663, 664 (2008)).

Here, other than including the standard of review, Hill did not include any legal authority supporting his argument that the Commission erred in “failing to consider evidence of [his] ongoing work duties and employer accommodations necessitated by the damaged prosthesis.” Hill’s brief, as to his second assignment of error, does not comply with Rule 5A:20(e). “At the risk of stating the obvious, the Rules of the Supreme Court are rules and not suggestions; we

expect litigants before this Court to abide by them.” *Bartley*, 67 Va. App. at 746 (quoting *Eaton v. Wash. Cnty. Dep’t of Soc. Servs.*, 66 Va. App. 317, 332 n.1 (2016)). If Hill believed the Commission erred, Rule 5A:20(e) required him “to present that error to us with legal authority to support [his] contention.” *Id.* (alteration in original) (quoting *Fadness v. Fadness*, 52 Va. App. 833, 851 (2008)). Indeed, “[i]t is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Id.* (alteration in original).

Our “[n]eutral procedural rules allow courts to set limits and mark off boundaries without regard to which side stands to gain or lose. . . . When courts apply procedural rules dispassionately and neutrally to every litigant . . . everyone else knows exactly what is expected of them and, hopefully, will rise to the occasion.” *Browning v. Browning*, 68 Va. App. 19, 31 (2017) (second and third alterations in original) (quoting *Reaves v. Tucker*, 67 Va. App. 719, 734 (2017)). Furthermore, a litigant appearing *pro se* “is no less bound by the rules of procedure and substantive law than a defendant represented by counsel.” *Townes v. Commonwealth*, 234 Va. 307, 319 (1987). “Relaxing the procedural rules for *pro se* litigants would have the anomalous effect of disfavoring litigants represented by counsel, an intolerable consequence for a judicial system devoted to neutrality to all and favoritism to none.” *Brazell v. Fairfax Cnty. Dep’t of Family Servs.*, No. 1347-06-4, slip op. at 11-12 (Va. Ct. App. Aug. 12, 2008).

Accordingly, this “[u]nsupported assertion[] of error ‘do[es] not merit appellate consideration.’” *Bartley*, 67 Va. App. at 744 (quoting *Jones*, 51 Va. App. at 734).

CONCLUSION

For the reasons stated above, the Commission did not err in its rulings.

Affirmed.