

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Bumgardner and Lemons

HARVEY SCOTT

v. Record No. 1224-99-2

PENINSULA AIRPORT COMMISSION AND
EMPLOYERS INSURANCE OF WAUSAU

MEMORANDUM OPINION*

PER CURIAM

SEPTEMBER 14, 1999

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Harvey Scott, pro se, on brief).

(Deborah S. O'Toole; Cowen & Owen, P.C.,
on brief), for appellees.

Harvey Scott (claimant) contends that the Workers' Compensation Commission (commission) erred in denying him benefits after January 19, 1998 on the grounds that he was released to light-duty work and that he failed to market his remaining work capacity after that date. 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.

On appeal, we view the evidence in the light most favorable to the prevailing party below. See R.G. Moore Bldg. Corp. v. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). Unless we can say as a matter of law that claimant's evidence sustained his burden of proof, the commission's findings are

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

binding and conclusive upon us. See Tomko v. Michael's Plastering. Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

In denying claimant's application for benefits, the commission found as follows:

The medical record contains a note dated May 30, 1995, in which Dr. [Charles H.] Bonner opined that [claimant] was not suitable for any work. There are no later work disability slips in the record. Dr. Bonner wrote on January 20, 1998, that the claimant's restrictions were sitting three hours, walking 200 feet, standing one-half hour intermittently, and the "pt states taking bus exceeds his functional capacities." It is immaterial that the restrictions originated from [claimant's] request for documentation of his inability to ride the bus. The restrictions were written on a work disability form and indicated partial, not complete incapacity.

. . . The claimant has not looked for any type of light-duty employment. Since he failed to reasonably market his residual work capacity, benefits were correctly denied after January 19, 1998.

In light of Dr. Bonner's uncontradicted January 20, 1998 work disability form, which established that claimant was partially but not totally disabled, and the lack of any evidence to indicate that claimant made any effort to market his residual work capacity, we cannot find as a matter of law that claimant's evidence sustained his burden of proof. Accordingly, we affirm the commission's decision.

Affirmed.