

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Felton, Judge Petty and Senior Judge Bumgardner

FORD MOTOR COMPANY

v. Record No. 1254-06-1

WILLIAM K. FAVINGER

MEMORANDUM OPINION*
PER CURIAM
SEPTEMBER 19, 2006

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Barry Dorans; Samuel W. Meekins, Jr.; Wolcott, Rivers, Gates,
P.C., on briefs), for appellant.

(Gregory E. Camden; Charlene A. Moring; Montagna Klein
Camden, LLP, on brief), for appellee.

Ford Motor Company (employer) appeals a decision of the Workers' Compensation Commission awarding temporary partial disability (TPD) benefits to William K. Favinger (claimant) during certain periods of wage loss. Employer contends the commission erred in (1) awarding claimant TPD benefits for lost overtime where claimant failed to prove any wage loss causally related to his compensable injury; (2) finding that claimant had no duty to market his residual work capacity to recoup lost overtime; and (3) calculating claimant's TPD benefits based upon the actual weekly wages he earned during certain weeks post-injury as opposed to the average weekly wages claimant was able to earn post-injury.¹ We have reviewed the record,

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

¹ Employer also argues that the commission should have averaged the wages claimant was able to earn post-injury during the twenty-one weeks shown on the wage chart and compare that average to his pre-injury average weekly wage in calculating his TPD benefits. Employer did not raise that particular argument before the commission in its petition for reconsideration when it addressed this issue. Accordingly, we will not consider that argument for the first time on appeal. See Rule 5A:18.

the commission's December 10, 2004 review opinion, its January 6, 2005 order denying employer's petition for reconsideration, and its April 24, 2006 opinion rendered upon remand from this Court, and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in those opinions and order. See Favinger v. Ford Motor Company, VWC File No. 211-65-38 (Dec. 10, 2004 opinion, January 6, 2005 order, and April 24, 2006 opinion). 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.