

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

SUPER FRESH FOOD MARKETS, INC.

v. Record No. 1276-98-4

REJINO C. STULTZ

MEMORANDUM OPINION*
PER CURIAM
OCTOBER 6, 1998

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(S. Vernon Priddy, III; Sands, Anderson,
Marks & Miller, on brief), for appellant.

(James E. Swiger; Swiger & Cay, on brief),
for appellee.

Super Fresh Food Markets, Inc. ("employer") contends that the Workers' Compensation Commission ("commission") erred in finding that the Supreme Court's holding in The Steinrich Group v. Jemmott, 251 Va. 186, 467 S.E.2d 795 (1996), did not bar compensation for Rejino C. Stultz's ("claimant") left shoulder condition. The commission found that the left shoulder condition was a compensable consequence of claimant's original February 14, 1994 injury by accident. Employer also argues that the commission should have dismissed claimant's claim, because he failed to file his claim for benefits as a new injury claim, rather than as a change in condition. 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 § 17-116.010 this opinion is not designated for publication.

I.

In Virginia, "[t]he doctrine of compensable consequences is well established and has been in existence for many years."

Williams Indus., Inc. v. Wagoner, 24 Va. App. 181, 186, 480 S.E.2d 788, 790 (1997).

This doctrine, also known as the chain of causation rule, provides that "'where the chain of causation from the original industrial injury to the condition for which compensation is sought is direct, and not interrupted by any intervening cause attributable to the [employee's] own intentional conduct, then the subsequent [condition] should be compensable.'"

Food Distributors v. Estate of Ball, 24 Va. App. 692, 697, 485 S.E.2d 155, 158 (1997) (quoting Leadbetter, Inc. v. Penkalski, 21 Va. App. 427, 432, 464 S.E.2d 554, 556 (1995)) (other citation omitted). "'The simplest application of this principle is the rule that all the medical consequences and sequelae that flow from the primary injury are compensable.'" American Filtrona Co. v. Hanford, 16 Va. App. 159, 163, 428 S.E.2d 511, 513 (1993) (citation omitted). "[W]here a causal connection between the initial compensable injury and the subsequent injury is established . . . the subsequent injury 'is treated as if it occurred in the course of and arising out of the employee's employment.'" Bartholow Drywall Co. v. Hill, 12 Va. App. 790, 794, 407 S.E.2d 1, 3 (1991) (quoting Leonard v. Arnold, 218 Va. 210, 214, 237 S.E.2d 97, 100 (1977)).

Employer does not dispute that claimant proved a causal

connection between his initial February 14, 1994 compensable right shoulder injury and his subsequent left shoulder problems.¹

However, employer contends that the commission erred in refusing to apply the rule set forth in Jemmott to bar compensation in this case. Employer argues that Jemmott bars compensation for a cumulative trauma injury which is found to be a compensable consequence of an original injury by accident. We disagree.

In Jemmott, the Supreme Court held that "job-related impairments resulting from cumulative trauma caused by repetitive motion, however labeled or however defined, are, as a matter of law, not compensable under the present provisions of the Act." 251 Va. at 199, 467 S.E.2d at 802. Jemmott dealt with the compensability of a primary injury or condition, it did not address the compensability of a cumulative trauma injury caused by an intervening event, which was itself a result of the original compensable injury by accident. Nothing in Jemmott expressly overruled or altered the well-established doctrine of compensable consequences. Accordingly, the commission did not err in refusing to apply the holding in Jemmott to the facts of this case.

II.

Employer argues that the commission should have dismissed claimant's claim because he failed to file a claim for benefits

¹Claimant's testimony and the medical evidence established that his left shoulder symptoms were caused by overuse of his left extremity due to the injury to his right shoulder.

alleging a new injury by accident as required by Leonard v. Arnold, 218 Va. 210, 237 S.E.2d 97 (1977). Employer did not raise this specific argument before the commission. Accordingly, we will not consider this issue for the first time on appeal. See Green v. Warwick Plumbing & Heating Corp., 5 Va. App. 409, 413, 364 S.E.2d 4, 6 (1988); Rule 5A:18.

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

Affirmed.