

## COURT OF APPEALS OF VIRGINIA

Present: Judges Frank, Huff and Senior Judge Haley

LARRY DONNELL SMITH

v. Record No. 1306-12-3

VIRGINIA CAST STONE, INC. AND  
EMPLOYERS PREFERRED INSURANCE COMPANY

MEMORANDUM OPINION\*  
PER CURIAM  
FEBRUARY 12, 2013

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Larry Smith, *pro se*, on brief).

(Roberta A. Paluck; Thomas H. Miller; Frankl Miller & Webb, LLP,  
on brief), for appellees.

Larry Donnell Smith ("claimant") appeals a decision of the Workers' Compensation Commission finding that he failed to meet his burden of proving that his silica-related lung disease qualified as an occupational disease or ordinary disease of life under the Virginia Workers' Compensation Act. Claimant filed his opening brief with this Court on September 13, 2012. Upon receiving claimant's brief, this Court instructed claimant that his brief failed to comply with Rules 5A:4(d), 5A:20(c), 5A:20(d), 5A:20(e), and 5A:20(h), and instructed him to submit a set of replacement pleadings. Upon receiving an extension of time to file a replacement opening brief, claimant filed a replacement opening brief on November 26, 2012, but the replacement did not correct the deficiencies.

On December 5, 2012, this Court issued an order directing claimant to file a second replacement opening brief in compliance with the Rules of Court within ten days. Appellant has failed to comply with this order.

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

Rule 5A:4(d) requires that the certificate of the brief comply with the applicable word count limitation and state the number of words contained in the document. Rule 5A:20(c) requires that the brief include assignments of error. Rule 5A:20(d) requires that the brief include a statement of facts. Rule 5A:20(e) requires that the brief include the standard of review to be applied with respect to each assignment of error. Rule 5A:20(h) requires that the certificate of the brief indicate whether oral argument is waived.

We find claimant's failure to comply with these rules is significant, so we will not consider his arguments. See Jay v. Commonwealth, 275 Va. 510, 520, 659 S.E.2d 311, 317 (2008). Accordingly, the issues are waived and the final judgment of the commission is summarily affirmed. Rule 5A:27.<sup>1</sup>

Affirmed.

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<sup>1</sup> We deny appellees' motion to dismiss the appeal.