COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Coleman and Willis

JERRY ANNE BICKELL

v. Record No. 1328-98-1

LAKE TAYLOR HOSPITAL AND
HEALTHCARE PROVIDERS GROUP
SELF-INSURANCE ASSOCIATION

MEMORANDUM OPINION*
PER CURIAM
NOVEMBER 24, 1998

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(A. Kirk Whitworth; Joynes & Marcari, on brief), for appellant.

(Andrea L. Bailey; Crews & Hancock, on brief), for appellees.

Jerry Anne Bickell contends that the Workers' Compensation Commission erred in finding she failed to prove an injury by accident arising out of her employment on March 15, 1996. 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.

To recover benefits, Bickell must establish that she suffered an "injury by accident arising out of and in the course of [her] employment." Code § 65.2-101. "The phrase arising 'out of' refers to the origin or cause of the injury." County of Chesterfield v. Johnson, 237 Va. 180, 183, 376 S.E.2d 73, 74 (1989). It requires proof "that the conditions of the workplace or some significant work related exertion caused the injury."

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

Plumb Rite Plumbing Serv. v. Barbour, 8 Va. App. 482, 484, 382 S.E.2d 305, 306 (1989). Furthermore, the commission's determination that the evidence failed to prove "an injury arising out of the employment is a mixed question of law and fact and is reviewable by the appellate court." Plumb Rite, 8 Va. App. at 483, 382 S.E.2d at 305.

On appeal, we view the evidence in the light most favorable to the party prevailing below. See R.G. Moore Bldg. Corp. v. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). In denying Bickell's application, the commission found as follows:

> [W]e are persuaded that the accident occurred as described by [Bickell] both at the hearing and in her recorded statement. [Bickell] was standing, both feet flat on the floor, slightly bent at the waist with her arms outstretched in preparation to lift the patient. She had not lifted the patient or exerted any effort in preparation to do so. [Bickell] was not in an awkward position but was simply standing flat-footed. She had sought medical treatment for her ankle the day before, and she has not described any work-related cause for her ankle injury.

Credible evidence in the record established that Bickell was standing flat-footed in preparation for lifting the patient. She was not in an awkward position and did not engage in any significant exertion. Thus, no condition or hazard peculiar to Bickell's workplace caused her injury.

The commission correctly rejected Patsy Meseroll's testimony. Her testimony that Bickell was actually lifting the patient, contradicted Bickell's own testimony. Under the

doctrine enunciated in Massie v. Firmstone, 134 Va. 450, 462, 114 S.E. 652, 656 (1922), Bickell could not rise above her own testimony, which was insufficient to prove an injury by accident arising out of her employment. Therefore, we hold that Bickell failed to prove as a matter of law that her injury arose out of her employment.

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

Affirmed.