

COURT OF APPEALS OF VIRGINIA

Present: Judges McClanahan, Haley and Senior Judge Willis

CVS #00871/CVS OF VIRGINIA, INC. AND  
GAB ROBINS NORTH AMERICA, INC.

v. Record No. 1373-10-4

DARLENE A. BROOKS

MEMORANDUM OPINION\*  
PER CURIAM  
NOVEMBER 23, 2010

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Michael P. Del Bueno; Corey R. Pollard; Whitt & Del Bueno,  
P.C., on briefs), for appellants.

(Craig A. Brown; Alaina M. Dartt; Ashcraft & Gerel, LLP, on  
brief), for appellee.

CVS #00871/CVS of Virginia, Inc., and its insurer, GAB Robins North America, Inc. (employer) appeal a decision of the Workers' Compensation Commission. Employer contends the commission erred (1) in relying on a doctor's medical opinion that was speculative; (2) in assigning great weight to Dr. Richard P. Erwin's opinion that Darlene Brooks (claimant) continued to have foot pain related to her May 18, 2007 workplace accident; (3) when it refused to give more weight to the medical opinions of Drs. Edward A. Peck, III, Arthur I. Broder, and Richard L. Wilson, Jr., who concluded that neither the MRI results, physical examination nor the neurological examination of Brooks supported Dr. Erwin's medical opinion that claimant remained disabled; (4) in concluding employer did not meet its evidentiary burden of terminating or suspending claimant's outstanding award for benefits when it presented evidence from several doctors who concluded claimant was capable of returning to her pre-injury job, her current

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

disability did not result from her workplace accident, and her pain was not based upon any objective basis; (5) in failing to conclude claimant's pain was not consistent with malingering and secondary pain; (6) in finding Dr. Erwin provided unwavering testimony that claimant suffered from cervical spine scar tissue that was causing her pain instead of concluding Dr. Erwin's testimony was "all theory"; (7) in failing to find claimant's complaints of pain were insincere, incredible, and not the result of her May 18, 2007 accident; and (8) in failing to conclude claimant would receive secondary gain from magnifying her symptoms.

We have reviewed the record and the commission's opinion and affirm for the reasons stated by the commission in its final opinion. See Brooks v. CVS VA #00871, VWC File No. 233-79-19 (June 4, 2010). 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.