

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Clements and Senior Judge Annunziata

JUSTIN EVERETT PECK

v. Record No. 1401-06-4

R.G. MANAGEMENT SERVICES, INC.

MEMORANDUM OPINION*
PER CURIAM
OCTOBER 10, 2006

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Benjamin J. Trichilo; Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C., on briefs), for appellant.

(Frederick T. Schubert, III; Angela Fleming Gibbs; Midkiff, Muncie & Ross, P.C., on brief), for appellee.

Justin Everett Peck (claimant) appeals a decision of the Workers' Compensation Commission finding that (1) he failed to prove he sustained an injury by accident arising out of his employment on December 8, 2004; (2) the effects of his idiopathic fall were not compensable within the purview of Southland Corp. v. Parson, 1 Va. App. 281, 338 S.E.2d 162 (1985); and (3) the "street risk" doctrine was inapplicable. Claimant also contends the commission improperly relied upon the transcript of his deposition testimony, which was not filed or made a part of the record. We have reviewed the record, the commission's opinion, and its order denying claimant's motion for reconsideration, and find that this appeal is without merit.¹

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

¹ We disagree with claimant's assertion that the commission's order ruling on claimant's motion for reconsideration was merely advisory because the commission lost jurisdiction over the case before it entered that order. The commission denied claimant's motion for reconsideration on June 6, 2006. The United States Postal Service "Track & Confirm" receipt contained in the record reflects that claimant's counsel received the commission's May 5, 2006 review opinion on May 10, 2006. Therefore, the commission retained jurisdiction over the case for the thirty-day period after May 10, 2006. See Code § 65.2-706(B); Rule 5A:11(b), Rules of

Accordingly, we affirm for the reasons stated by the commission in its final opinion and order denying the motion for reconsideration. See Peck v. R.G. Management Services, Inc., VWC File No. 221-86-15 (May 5, 2006), and Peck v. R.G. Management Services, Inc., VWC File No. 221-86-15 (June 6, 2006). 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.

Supreme Court of Virginia. Thus, as of June 6, 2006, the commission still had jurisdiction over the case. Claimant's filing of his notice of appeal prior to that date did not deprive the commission of jurisdiction.