

## COURT OF APPEALS OF VIRGINIA

Present: Judges Alston, Decker and Retired Judge Coleman\*

FAIRFAX COUNTY

v. Record No. 1625-14-4

MATTHEW DOMYANCIC

MEMORANDUM OPINION\*\*  
PER CURIAM  
APRIL 14, 2015

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(David P. Bobzien, County Attorney; Peter D. Andreoli, Jr., Deputy County Attorney; Karen L. Gibbons, Senior Assistant County Attorney, Jamie M. Greenzweig, Assistant County Attorney, on briefs), for appellant.

(Jack T. Burgess; Burgess & Perigard, PLLC, on brief), for appellee.

Fairfax County (hereinafter “employer”) appeals a decision of the Workers’ Compensation Commission (hereinafter “the commission”) finding that the commission erred in denying employer’s application on August 23, 2013, asserting a change in condition in Matthew Domyancic (hereinafter “claimant”), and in denying employer’s application on November 25, 2013, seeking a change in claimant’s treating physician.<sup>1</sup> Employer also asserts the commission erred in finding the employer did not prove claimant’s failure to report a return to work. Finally,

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\* Judge Coleman took part in the consideration of this case prior to the effective date of this retirement on January 31, 2015.

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

<sup>1</sup> Despite employer’s reference to the November 25, 2013 application in its assignment of error, it notes in its opening brief that it withdrew its request for a change in treating physicians. Accordingly, this issue is now moot.

employer contends the commission erred in denying its request to terminate the outstanding award for temporary total benefits, effective January 1, 2012.

We have reviewed the record and the commission's opinion and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion.<sup>2</sup> See Domyancic v. Fairfax Cnty., JCN No. 2274883 (Aug. 7, 2014). 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.

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<sup>2</sup> In asserting the commission erred in finding that employer did not prove claimant's failure to report a return to work, employer asserts the commission cannot on the one hand give employer a credit for the funds received by claimant, and, on the other, conclude the funds did not constitute income. Because employer did not present this argument to the commission in a motion to reconsider, and raises it for the first time on appeal, it has waived this argument. See Williams v. Gloucester Sheriff's Dep't, 266 Va. 409, 411, 587 S.E.2d 546, 548 (2003).