

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Moon, Judges Willis and Bray
Argued at Norfolk, Virginia

RONALD DOUGLAS SMITH

v. Record No. 1794-94-1
KERSHAW AUTOMOTIVE, ET AL.

MEMORANDUM OPINION*
PER CURIAM
MAY 30, 1995

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Stuart A. Saunders (Saunders & DeSaulniers,
P.C., on brief), for appellant.

Jimese L. Pendergrast (Knight, Dudley, Dezern
& Clarke, P.L.L.C., on brief), for appellees.

Ronald Douglas Smith appeals a decision by the Virginia Workers' Compensation Commission suspending his award of benefits after finding that he unjustifiably refused selective employment procured for him suitable to his capacity and that he failed to cure such refusal. See Code § 65.2-510. We hold that the commission's decision is well supported by the record and affirm the suspension of Smith's benefits.

"[I]n order to support a finding [of refusal] based upon Code [§ 65.2-510], the record must disclose (1) a bona fide job offer suitable to the employee's capacity; (2) procured for the employee by the employer; and (3) an unjustified refusal by the employee to accept the job." Furthermore, a person receiving workers' compensation has a duty to cooperate in efforts to get him a job he is capable of performing.

Johnson v. City of Clifton Forge, 9 Va. App. 376, 378, 388 S.E.2d 654, 655 (1990) (citations omitted). On appeal, the commission's

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

findings of fact are conclusive and binding if based on credible evidence. V.P.I. & State Univ. v. Wood, 5 Va. App. 72, 74, 360 S.E.2d 376, 377 (1987).

Credible evidence supports the commission's finding that Smith received and accepted a valid offer of light duty work which he later abandoned. The evidence further supports the commission's finding that the employment procured for Smith by his former employer was within his residual capacity. While Smith maintains that he was required to perform tasks beyond his capacity, the record supports the commission's finding that, in fact, he was not because he was provided with a helper to assist him and was told by his new employer that he did not have to do any labor beyond what was prescribed to him by his physician.

The record also shows that Smith did not cooperate in efforts to find him a job he was capable of performing. First, Smith abandoned the job procured for him by his former employer without any attempt to work things out. After his abandonment, Smith, who claims his back had worsened due to his light duty work, did not seek medical attention for more than two months. Finally, Smith never sought the assistance of the Virginia Employment Commission and failed to adequately market his residual capacity.

Accordingly, we affirm the commission's decision.

Affirmed.