

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judge Bumgardner and
Senior Judge Hodges

ALLTEL COMMUNICATIONS, INC. AND
CINCINNATI INSURANCE COMPANY

v. Record No. 1798-01-1

TERESA E. HOLZNER

MEMORANDUM OPINION*
PER CURIAM
DECEMBER 11, 2001

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Calvin W. Fowler, Jr.; James J. Reid;
Williams, Mullen, Clark & Dobbins, on
briefs), for appellants.

(T. Gregory Evans; Joynes & Gaidies Law
Group, P.C., on brief), for appellee.

Alltel Communications, Inc. and its insurer (hereinafter referred to as "employer") contend the Workers' Compensation Commission erred in finding that Teresa E. Holzner (claimant) proved that her left wrist problems were a compensable consequence of her February 27, 1999 right wrist injury. 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. Rule 5A:27.¹

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

¹ We have considered employer's Motion for Sanctions or in the Alternative For an Extension of Time to Respond to Claimant's Brief. We deny the motion for sanctions and grant the motion for an extension of time to respond to claimant's

On appeal, we view the evidence in the light most favorable to the prevailing party below. See R.G. Moore Bldg. Corp. v. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). "The actual determination of causation is a factual finding that will not be disturbed on appeal if there is credible evidence to support the finding." Ingersoll-Rand Co. v. Musick, 7 Va. App. 684, 688, 376 S.E.2d 814, 817 (1989).

In ruling that claimant proved that her left wrist problems were caused by the November 30, 1999 Functional Capacities Evaluation ("FCE"), which was necessitated by claimant's compensable February 27, 1999 right wrist injury, the commission found as follows:

The December 4, 1999, emergency room report noted that the claimant had experienced left-wrist pain since November 30, the date of the FCE. Dr. [Robert] Rutland's opinion that the left-wrist injury was not "work-related" appeared to be more of a statement concerning how the injury actually occurred.

The claimant's testimony concerning how the injury actually occurred was that she hurt it performing a lifting exercise, where a box slipped and she caught it before it fell. [Cynthia] Free's testimony was that she did not recall such an incident and that she did not note any left-wrist problems. The FCE results, however, indicated that the lifting exercise was terminated by the claimant because of "complaints of fatigue, excessive discomfort, or inability to complete the required number of movements

brief. We have considered employer's reply brief filed with this Court on November 8, 2001 in rendering our decision.

during the testing interval (cycle)."
Moreover, Free recalled the claimant informing her between one and two weeks after the FCE that she was "sore," although she could not recall what particularly was sore. Free also described the FCE as "very strenuous."

The medical records also corroborated the claimant's testimony. The December 4, 1999, emergency room record specifically corroborated that the claimant injured her left wrist on November 30, 1999. The claimant had not reported any pain complaints in her left wrist before the November 30, 1999, FCE. We believe that although Free's testimony failed to corroborate the claimant's testimony, the actual FCE results and subsequent medical records did, and that the claimant satisfied her burden of proof.

"When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of the employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of a primary injury." Leonard v. Arnold, 218 Va. 210, 214, 237 S.E.2d 97, 99 (1977). "In other words, where a causal connection between the initial compensable injury and the subsequent injury is established . . . the subsequent injury is treated as if it occurred in the course of and arising out of the employee's employment." Bartholow Drywall Co. v. Hill, 12 Va. App. 790, 794, 407 S.E.2d 1, 3 (1991) (citations omitted).

Credible evidence, including claimant's testimony, the December 4, 1999 emergency room report, and the FCE results, supports the commission's finding that claimant's left wrist

problems were a compensable consequence of her February 27, 1999 right wrist injury. As fact finder, the commission was entitled to give little probative weight to Dr. Rutland's statement by inferring that it focused upon how the injury occurred rather than its causation. "Medical evidence is not necessarily conclusive, but is subject to the commission's consideration and weighing." Hungerford Mechanical Corp. v. Hobson, 11 Va. App. 675, 677, 401 S.E.2d 213, 215 (1991). Moreover, "[i]n determining whether credible evidence exists, the appellate court does not retry the facts, reweigh the preponderance of the evidence, or make its own determination of the credibility of the witnesses." Wagner Enters., Inc. v. Brooks, 12 Va. App. 890, 894, 407 S.E.2d 32, 35 (1991).

Because credible evidence supports the commission's finding that the FCE, which was necessitated by the compensable right wrist injury, caused claimant's left wrist problems, we will not disturb that finding on appeal. Accordingly, we affirm the commission's decision.

Affirmed.