

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

BILLY B. HARMAN

v. Record No. 1832-98-3

B & P CONSTRUCTION AND  
HARTFORD INSURANCE COMPANY

MEMORANDUM OPINION\*  
PER CURIAM  
JANUARY 19, 1999

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Ginger Jonas Largen; Morefield, Kendrick,  
Hess & Largen, on brief), for appellant.

(Michael F. Blair; Penn, Stuart & Eskridge,  
on brief), for appellees.

Billy B. Harman ("claimant") contends that the Workers' Compensation Commission ("commission") erred in finding that B & P Construction and its insurer (hereinafter referred to as "employer") proved that claimant was capable of performing his pre-injury work. 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. See Rule 5A:27.

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). "[I]t is fundamental that a finding of fact made by the Commission is conclusive and binding upon this court on review. A question

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\*Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

raised by conflicting medical opinion is a question of fact." Commonwealth v. Powell, 2 Va. App. 712, 714, 347 S.E.2d 532, 533 (1986).

In granting employer's application, the commission accepted the opinions of Drs. Jim Brasfield and John Jane, treating neurosurgeons, who opined that claimant was capable of returning to his regular employment. The commission also accepted the opinion of Dr. Paul Kelley, who evaluated claimant and determined that claimant's psychological problems did not prevent him from engaging in his regular employment.

In so ruling, the commission rejected the contrary opinions of Drs. Calvin Johnson, Barry Friedman, and Neil Dubner. The commission articulated legitimate reasons for giving more weight to the opinions of Drs. Brasfield, Jane, and Kelly. Those opinions provide credible evidence to support the commission's findings, which are binding upon us on appeal. See James v. Capitol Steel Constr. Co., 8 Va. App. 512, 515, 382 S.E.2d 487, 488 (1989). "The fact that there is contrary evidence in the record is of no consequence if there is credible evidence to support the commission's finding." Wagner Enters., Inc. v. Brooks, 12 Va. App. 890, 894, 407 S.E.2d 32, 35 (1991).

For these reasons, we affirm the commission's decision.

Affirmed.