

COURT OF APPEALS OF VIRGINIA

Present: Judges Humphreys, Powell and Senior Judge Clements

GLORIA ANNE FLEMING

v. Record No. 1878-10-2

PHILIP MORRIS USA, INC. AND  
AMERICAN PROTECTION INSURANCE COMPANY

MEMORANDUM OPINION\*  
PER CURIAM  
JANUARY 25, 2011

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(T. Bryan Byrne, on briefs), for appellant.

(Michael N. Salveson; Andrea K. Zizzi; Littler Mendelson, on brief),  
for appellees.

Gloria Anne Fleming appeals a decision of the Workers' Compensation Commission finding (1) she was not underpaid \$4,293.38 in compensation benefits, and was, instead, overpaid \$558.80 in compensation benefits; (2) she was not entitled to a twenty percent penalty on unpaid compensation benefits, attorney's fees and costs; (3) cost of living allowances were not payments under Code § 65.2-524, and she was not entitled to any penalties for late payment of her cost of living adjustments; and (4) there was no evidence Philip Morris, USA, Inc. and its insurer, American Protection Insurance Company, denied responsibility for payment of compensation without reasonable grounds, or withheld payments intentionally or in bad faith. 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. See Fleming v. Philip Morris, USA, Inc., VWC File No. 213-50-38 (Aug. 12, 2010). We dispense with oral argument and summarily affirm because the facts and legal contentions are adequately

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

presented in the materials before the Court and argument would not aid the decisional process.

See Code § 17.1-403; Rule 5A:27.

Affirmed.