

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

ZINAIDA R. SOYFER

v. Record No. 1879-95-2

MEMORANDUM OPINION*
PER CURIAM
JANUARY 23, 1996

ST. MARY'S HOSPITAL
AND

PENNSYLVANIA MANUFACTURER'S ASSOCIATION
INSURANCE COMPANY

FROM THE VIRGINIA WORKERS'
COMPENSATION COMMISSION

(David C. Jackson, on brief), for appellant.

(Jennifer G. Marwitz; Sands, Anderson, Marks & Miller,
on brief), for appellees.

Zinaida R. Soyfer ("claimant") contends that the Workers' Compensation Commission erred in finding that she failed to prove a causal connection between her current condition (consisting of reflex sympathetic dystrophy ("RSD") of the right upper extremity, chronic right shoulder pain, and chronic right hand pain) and her compensable September 28, 1993 injury by accident.

Claimant also argues that the commission erred by not addressing the issues of whether Dr. I. M. Averbuch's treatment constituted emergency treatment and whether the failure of St. Mary's Hospital ("employer") to provide claimant a panel of physicians justified her seeking treatment from Dr. Averbuch. Upon reviewing the record and the briefs of the parties, we conclude

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

that this appeal is without merit. Accordingly, we summarily affirm the commission's decision. Rule 5A:27.

On appeal, we view the evidence in the light most favorable to the prevailing party below. R.G. Moore Bldg. Corp. v. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). Unless we can say as a matter of law that claimant's evidence sustained her burden of proving causation, the commission's findings are binding and conclusive on appeal. Tomko v. Michael's Plastering Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

The commission held that claimant's evidence did not show that her September 28, 1993 compensable right shoulder injury caused her RSD and disability, if any, beginning September 14, 1994. In so ruling, the commission found that Dr. Averbuch, who first diagnosed claimant as suffering from RSD in September 1994, did not opine whether this condition was caused by claimant's compensable right shoulder injury or her non-compensable right carpal tunnel syndrome.¹ This finding is supported by the medical records and will not be disturbed on appeal.

Moreover, Dr. Whipple's medical records do not provide any evidence of a causal connection between claimant's current condition and her compensable right shoulder injury. On March

¹On February 3, 1994, Dr. Terry Whipple, claimant's initial treating physician, opined that he could not relate her right hand symptoms to her compensable right shoulder injury or the repetitive tasks she performed at work. No evidence contradicted this opinion.

24, 1994, Dr. Whipple noted that claimant suffered from "right upper extremity pain, unknown etiology." He also noted that the report of Hand Management Specialists showed no evidence of reflex sympathetic dystrophy. On May 31, 1994, Dr. Whipple noted that claimant's shoulder was no longer uncomfortable and he released her to return to work, without restrictions, as of June 1, 1994.

Based upon this record, we cannot say as a matter of law that claimant met her burden of proving that her current condition and resulting disability, if any, are related to her compensable right shoulder injury. Because our ruling on the causation issue disposes of this appeal, we need not address the remaining two questions presented by claimant.

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

Affirmed.