

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Elder and Fitzpatrick

JOHN P. ALLEE

v. Record No. 1960-96-4

MEMORANDUM OPINION*

PER CURIAM

JANUARY 14, 1997

ILE WAYNE BLAKE, INC. T/A

YESTERDAYS

AND

UNINSURED EMPLOYER'S FUND

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(John P. Allee, pro se, on brief).

(James S. Gilmore, III, Attorney General;
John J. Beall, Jr., Senior Assistant Attorney
General; Paul S. Stahl, Assistant Attorney
General, on brief), for appellee Uninsured
Employer's Fund.

No brief for appellee Ile Wayne Blake, Inc.
t/a Yesterdays.

John P. Allee (claimant) contends that the Workers' Compensation Commission (commission) erred in finding that he failed to prove that his current low back pain and groin symptoms and resulting disability were causally related to his compensable December 13, 1993 injury by accident. 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.

On appeal, we view the evidence in the light most favorable to the prevailing party below. R.G. Moore Bldg. Corp. v.

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

Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990).

"General principles of workman's compensation law provide that '[i]n an application for review of any award on the ground of change in condition, the burden is on the party alleging such change to prove his allegations by a preponderance of the evidence.'" Great Atl. & Pac. Tea Co. v. Bateman, 4 Va. App. 459, 464, 359 S.E.2d 98, 101 (1987) (quoting Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App. 435, 438-39, 339 S.E.2d 570, 572 (1986)). Unless we can say as a matter of law that claimant's evidence sustained his burden of proof, the commission's findings are binding and conclusive upon us. Tomko v. Michael's Plastering Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

Claimant's treating physicians, Drs. C. Bernard Cross and W. Paul Harris, concluded that claimant's current symptoms were of unknown etiology. Absent medical evidence linking claimant's current symptoms to his compensable injury by accident, we cannot find as a matter of law that his evidence sustained his burden of proof. Accordingly, we affirm the commission's decision.

Affirmed.