

COURT OF APPEALS OF VIRGINIA

Present: Judge McClanahan, Senior Judges Coleman and Annunziata

MATTHEW WILLIAM NEWBERGER

v. Record No. 2265-04-4

TRAVILIAN HOMES, INC. AND
ERIE INSURANCE EXCHANGE

MEMORANDUM OPINION*
PER CURIAM
FEBRUARY 8, 2005

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Dean E. Wanderer; Dean E. Wanderer & Associates, on brief), for
appellant.

(Daniel E. Lynch; John T. Cornett, Jr.; Williams & Lynch, on brief),
for appellees.

Matthew William Newberger (claimant) appeals a decision of the Workers' Compensation Commission finding that he failed to prove that his condition/disability after December 9, 2002, was causally related to his compensable October 31, 2002 injury by accident. We have reviewed the record and the commission's opinion and find no reversible error. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Newberger v. Travilian Homes, Inc., VWC File No. 214-56-01 (Aug. 23, 2004). We dispense with oral argument and summarily affirm because the facts and legal contentions are adequately

* 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:27.¹

Affirmed.

¹Claimant also argues on appeal that he was entitled to a de facto award and the burden of proof should have shifted to employer to show that his condition had changed from that of total or partial disability. Claimant did not raise this argument or theory of recovery before the commission. Accordingly, we will not consider it for the first time on appeal. See Rule 5A:18; see also Kendrick v. Nationwide Homes, Inc., 4 Va. App. 189, 192, 355 S.E.2d 347, 349 (1987). Moreover, the record does not reflect any reason to invoke the good cause or ends of justice exceptions to Rule 5A:18.