

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Elder and Fitzpatrick

ERIC PAUL PIKE

v. Record No. 2614-95-1

MEMORANDUM OPINION*

PER CURIAM

MAY 14, 1996

SCOTT A. HUDSON

AND

HARTFORD UNDERWRITERS

INSURANCE COMPANY

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(William M. McKee, on brief), for appellant.

(Susan B. Potter; Vandeventer, Black,
Meredith & Martin, on brief), for appellees.

Eric P. Pike (claimant) contends that the Workers' Compensation Commission (commission) erred in finding that he failed to prove he sustained an injury by accident arising out of and in the course of his employment on December 1, 1994. 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. Mullins, 10 Va. App. 211, 212, 390 S.E.2d 788, 788 (1990). "In order to carry his burden of proving an 'injury by accident,' a claimant must prove the cause of his injury was an identifiable incident or sudden precipitating event and that it resulted in an

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

obvious and sudden mechanical or structural change in the body."

Morris v. Morris, 238 Va. 578, 589, 385 S.E.2d 858, 865 (1989).

Unless we can say as a matter of law that claimant's evidence sustained his burden of proof, the commission's finding is binding and conclusive upon us. Tomko v. Michael's Plastering Co., 210 Va. 697, 699, 173 S.E.2d 833, 835 (1970).

The commission found that neither claimant's testimony nor the medical record established that he sustained a compensable injury by accident on December 1, 1994. As the basis for its decision, the commission stated the following:

[Claimant's] testimony that he sustained injury on December 1, 1994, when Matina dropped his end of a sheetrock panel, is not supported by the weight of the evidence. Matina testified that he could not recall the incident. While the claimant initially testified that he immediately informed Matina of his injury, he later changed his testimony. Matina stated that [claimant] never informed him of an injury on December 1, 1994, and exhibited no indication of injury on that date. On December 5, 1994, Dr. Byrd reported that the claimant was experiencing neck and right arm pain for one month. There was no mention of an injury of December 1, 1994, until six weeks later during Dr. Mein's initial evaluation.¹

As fact finder, the commission was entitled to give more weight to the testimony of Matina and Hudson than to claimant's

¹The commission also noted that Scott Hudson, claimant's supervisor, who worked in the same house on December 1, 1994 as claimant and Matina, testified that claimant did not report an injury to him on that date. Hudson first heard of the alleged injury on December 7, 1994, when claimant called him to obtain insurance information. Even then, claimant did not give Hudson any information concerning the alleged injury.

testimony. Based upon the testimony of Matina and Hudson, the commission could conclude that claimant did not sustain a compensable injury by accident on December 1, 1994. Furthermore, the commission could infer from the history contained in Dr. Byrd's medical record that claimant had suffered from neck and arm pain before the alleged accident and, consequently, the injury predated the alleged accident. "Where reasonable inferences may be drawn from the evidence in support of the commission's factual findings, they will not be disturbed by this Court on appeal." Hawks v. Henrico County Sch. Bd., 7 Va. App. 398, 404, 374 S.E.2d 695, 698 (1988).

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

Affirmed.