

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Beales and Senior Judge Annunziata

GOODYEAR TIRE & RUBBER COMPANY AND
LIBERTY MUTUAL GROUP

v. Record No. 2945-08-3

ANGELO D. TARPLEY

MEMORANDUM OPINION*
PER CURIAM
MAY 5, 2009

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(James A. L. Daniel; Janine M. Jacob; Brian R. Charville; Daniel,
Medley & Kirby, P.C., on brief), for appellants.

No brief for appellee.

The Goodyear Tire & Rubber Company and Liberty Mutual Group (hereinafter referred to collectively as “employer”) appeal a decision of the Workers’ Compensation Commission awarding Angelo D. Tarpley (claimant) lifetime medical benefits, and finding he proved he sustained an injury by accident arising out of and in the course of his employment on May 4, 2007.¹ We have reviewed the record and the commission’s opinion and find that this appeal is

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

¹ Employer argues claimant suffered from a pre-existing condition or a non-compensable, repetitive trauma. Employer contends there were inconsistencies in claimant’s testimony concerning his failure to inform his healthcare professionals about his pre-existing lumbar condition and his history of back problems. The deputy commissioner and the full commission noted that claimant told the healthcare professionals at Piedmont Prime Care about his prior back surgery and his medical records show a history of back pain dating back to 2005. In determining that claimant proved a compensable injury by accident, the deputy commissioner and the full commission found that claimant’s testimony and his medical experts from Piedmont Prime Care were more credible than employer’s medical expert. See Dep’t of Corrs. v. Powell, 2 Va. App. 712, 714, 347 S.E.2d 532, 533 (1986) (finding it is fundamental that a finding of fact made by the commission is conclusive and binding upon this Court on review and a question raised by conflicting medical opinion is a question of fact).

without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Tarpley v. Goodyear Tire & Rubber Co., VWC File No. 233-47-29 (Nov. 19, 2008). We dispense with oral argument and summarily affirm because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. See Code § 17.1-403; Rule 5A:27.

Affirmed.