

COURT OF APPEALS OF VIRGINIA

Present: Judges Felton, Kelsey and Senior Judge Willis
Argued at Richmond, Virginia

CVS VIRGINIA DISTRIBUTION, INC. AND
CVS CORP./GAB ROBINS
NORTH AMERICA, INC.

v. Record No. 3032-02-2

MEMORANDUM OPINION* BY
JUDGE JERE M.H. WILLIS, JR.
JUNE 3, 2003

JOYCE TAYLOR OWENS

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Michael P. Del Bueno (Ralph L. Whitt, Jr.;
Whitt & Associates, on briefs), for
appellants.

B. Mayes Marks, Jr. (Marks and Williams,
P.C., on brief), for appellee.

Pending review of the deputy commissioner's determination, the appellants filed with the commission on July 3, 2002, a petition to receive certain specified after-discovered evidence. The full commission filed its review opinion without ruling on that petition. Rule 3.3 of the Rules of the Commission required such a ruling.

The decision in this case turned in substantial measure on the claimant's credibility. Because the evidence asserted in the petition addressed the claimant's credibility, we cannot say

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

that the commission's disregard of the petition was harmless error.

Accordingly, we reverse the judgment of the commission and remand the case to the commission with direction to consider and rule on the petition and to take such further action as may be appropriate in light of that ruling.

Reversed and remanded.