

COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Humphreys and Senior Judge Overton
Argued at Chesapeake, Virginia

7-ELEVEN AND AMERICAN PROTECTION
INSURANCE COMPANY

v. Record No. 3041-00-1

LAURA M. SMITH

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
JUNE 5, 2001

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Linda M. Gillen (Andrew R. Blair, on brief),
for appellants.

No brief or argument for appellee.

7-Eleven and its insurer (hereinafter referred to as "employer") contend that the Workers' Compensation Commission erred in finding that Laura M. Smith's (claimant) May 6, 1996 change-in-condition application was properly filed and not abandoned by claimant. Because we find that the full commission's November 20, 2000 opinion did not constitute a final award appealable to this Court, we dismiss employer's appeal.

Code § 65.2-706 provides that "[n]o appeal shall be taken from the decision of one Commissioner until a review of the case has been had before the full Commission, as provided in Code § 65.2-705, and an award entered by it. Appeals shall lie from such award to the Court of Appeals"

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

"[T]he words 'such award' . . . [contained in § 65.2-706] mean final award, that is, a decision of the . . . Commission granting or denying, or changing or refusing to change, some benefit payable or allowable under the . . . Act and leaving nothing to be done except to superintend ministerially the execution of the award."

Uninsured Employer's Fund v. Harper, 26 Va. App. 522, 527, 495 S.E.2d 540, 543 (1998) (citation omitted).

The full commission's November 20, 2000 opinion affirmed the deputy commissioner's determination that claimant's May 6, 1996 change-in-condition application was properly filed and not abandoned. The full commission then referred this matter back to the hearing docket for a determination of the substantive issues surrounding claimant's change-in-condition applications. Thus, the commission's November 20, 2000 opinion did not dispose of the merits of the claims, leaving nothing further to be done. Accordingly, it did not constitute a final award appealable to this Court. See id.

For these reasons, we dismiss employer's appeal.

Dismissed.