

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

08/13/96

WILLIS J. JOHNSON, Claimant

Opinion by the
Full Commission

v. VWC File No. 175-68-41

COMMERCE DEVELOPMENT, Employer
LIBERTY MUTUAL INSURANCE COMPANY, Insurer

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for the Defendants.¹

Review on the record by Commissioner Joyner, Commissioner Tarr, and Deputy Commissioner Herring at Richmond, Virginia.

The issue presented on review is whether the deputy commissioner correctly found the employee's testimony credible, resulting in an award for compensation and medical

¹ At the hearing the defendants were represented by William C. Walker.

benefits. The record is well-known to the parties and will not be repeated here. Suffice it to say that the employee, who was engaged as a laborer, testified that he was injured on a date uncertain when he and his supervisor were dumping wheelbarrow loads of cement into holes at a building renovation. The employee testified that he pushed a wheelbarrow-load of cement toward one of the holes, when the handle broke, throwing him to his knees on the cement floor. His supervisor, Fred Holland, with whom he was working, was five to ten feet away. Holland denied that he saw the claimant fall to the work floor while dumping cement, although he did recall on one occasion when the wheelbarrow tipped over accidentally. Holland also produced records demonstrating that no cement was delivered after June 7, 1995. He stated that, therefore, neither he nor the employee were dumping cement on June 9. There were other inconsistencies between the two men's testimony, and the slim documentary record produced tended to support that version offered by Holland.

Nevertheless, the deputy commissioner, who had the opportunity to scrutinize the employee while he testified, including vigorous cross-examination, concluded that the employee merely was uncertain as to the date of his injury but recalled the specific event and "was not attempting to deceive in his testimony..." Relying on our decision in Mullins v. Dominion Coal Corp., 68 O.I.C. 43 (1989), the deputy commissioner found that the employee's confusion over the accident date would not, of itself, bar his recovery for an otherwise compensable industrial accident.

Although the deputy commissioner did not specifically hold that his assessment of the employee's credibility was based upon his observation at the hearing, it is clear that such observation was the primary basis for the deputy commissioner's award. Although there is evidence supporting the employer's version of events, we also find ample evidence

corroborating Johnson's testimony. Indeed, the employee presented to the treating physician with a history of transporting cement by wheelbarrow and falling when the wheelbarrow fell, causing injury to his back, both legs and buttocks. The initial visit to the doctor was noted by history to be 6½ weeks post-injury.

We find that the thrust of this history mirrors the employee's testimony at the hearing and supports the deputy commissioner's findings. See Bullion Hollow Enterprises, Inc. v. Lane, 14 Va. App. 725, 418 S.E.2d 904 (1992).

Therefore, the February 7, 1996, opinion is AFFIRMED.

Gregory E. Camden, Esquire, is hereby awarded an additional \$250.00 for a total attorney's fee of \$1,000.00, which shall be deducted from accrued compensation by the defendants and paid to Mr. Camden in a lump sum.

APPEAL

This Opinion shall become final unless appealed to the Virginia Court of Appeals within thirty days.

cc: Mr. Willis J. Johnson
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