

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

06/30/97

BILLY LEE LEESON, Claimant

Opinion by DIAMOND
Commissioner

v. VWC File No. 180-28-13

WASHINGTON COUNTY SCHOOL BOARD, Employer
VIRGINIA MUNICIPAL GROUP
SELF-INSURANCE ASSOCIATION, Insurer

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For the Defendants.

REVIEW on the record before Commissioner Joyner, Commissioner Diamond, and Deputy Commissioner Dely at Richmond, Virginia.

This case is before the Commission at the request of the claimant for Review of the Deputy Commissioner's February 4, 1997, Opinion which refused to vacate a nonsuit order. We REVERSE.

The record reflects that on July 29, 1996, the claimant filed an application for an injury which occurred on October 14, 1994. The case was set for hearing on January 8, 1997. On January 7, 1997, at approximately 2:00 p.m., counsel for the claimant called the Deputy Commissioner to request a continuance because of a conflict with another court. The request was denied. Claimant's counsel then requested a nonsuit, which was granted.

Claimant's counsel so informed defense counsel. At approximately 4:30 p.m., apparently having realized that the effect of the nonsuit would be to extinguish the claim because of the statute of limitations, claimant's counsel called the Deputy Commissioner to withdraw his nonsuit request. The Deputy Commissioner removed the nonsuit order from the outgoing mail, and advised that he would vacate the nonsuit order if defense counsel did not object. Defense counsel did object, and stated that it was too late to contact employer's witnesses to notify them to appear the next day at the hearing.

Claimant's counsel and claimant did appear at the scheduled hearing the next day, and the Deputy Commissioner declined to go on record. He directed the parties to submit briefs by January 24, 1997, on the issue of whether he had the authority to vacate the nonsuit order. Subsequently he issued the Opinion dated February 4, 1997, from which the claimant timely appealed.¹

We find that the Deputy Commissioner erred in finding that he did not have the authority to vacate the nonsuit Order or to allow the claimant to withdraw a nonsuit request two and a half hours after the request was made. The effect of refusing to allow the claimant to withdraw his request is to extinguish the claim. This harsh result is inconsistent with the beneficent purposes of the Act. The purpose of the Workers' Compensation Act is to protect the employee. Ellis v. Commonwealth, 182 Va. 293, 28 S.E.2d 730 (1944); Rust Eng'r Co. v. Ramsey, 194 Va. 975, 76 S.E. 2d 195 (1953). It should be liberally construed in harmony with the humane purpose of the Act. Dixon v. Norfolk Shipbuilding & Dry

¹ The claimant filed an untimely appeal of the January 7, 1997, Order, which was dismissed by the Full Commission. This does not bar the claimant from the right to a Review of the Deputy Commissioner's February 4, 1997, Opinion.

Dock Corp., 182 Va. 185, 28 S.E.2d 617 (1944); Chalkley v. Nolde Bros., 186 Va. 900, 45 S.E.2d 297 (1947); Bailey v. Stonega Coke & Coal Co., 185 a. 653, 40 S.E.2d 254 (1946); Fauver v. Bell, 192 Va. 518, 65 S.E.2d 575 (1951); Rust Eng'r Co. v. Ramsey, 194 Va. 975, 76 S.E.2d 195 (1953). The Commission procedures are not required to be held in strict conformity with civil courts. Fas Mart Convenience Stores, Inc. v. Tyndell, Record No. 1806-89-2 (Va. App. October 9, 1990). Moreover, the Deputy Commissioner retains jurisdiction over Orders and Awards for twenty days from issuance, during which time he may vacate, amend, or reconsider his decision. It is within his discretionary power to grant or deny motions to continue a case, which would have been the effective result in this case. In order to avoid the harsh result, the nonsuit should have been granted.

We GRANT the claimant's Motion to Vacate the Nonsuit Order, and this case is referred to the hearing docket.

The Opinion below is REVERSED.

This matter is hereby removed from the Review docket.

APPEAL

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

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