

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by WILLIAMS
Commissioner

May 6, 2016

RACHAEL CASEY v. STANDARD MOTOR PRODUCTS INC
AMERICAN ZURICH INS CO, Insurance Carrier
Jurisdiction Claim No. VA02000019884
Date of Injury November 24, 2014

Christopher L. Spinelli, Esquire
For the Claimant.

David A. Obuchowicz, Esquire
For the Defendants.

REVIEW on the record by Commissioner Williams, Commissioner Marshall and Commissioner Newman at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's December 28, 2015 Amended Opinion.¹ We AFFIRM.

I. Material Proceedings

On January 23, 2015, the claimant filed a Claim for Benefits alleging she suffered a compensable injury by accident to her right knee on November 24, 2014. She sought medical benefits and continuing temporary total disability benefits beginning November 24, 2014. The parties stipulated that the claimant's pre-injury average weekly wage was \$685.10.

The defendants defended the claim on the grounds that the claimant did not sustain an injury by accident and the claimant did not suffer the extent of disability claimed.

¹ On December 28, 2015, Deputy Commissioner Bruner vacated his December 23, 2015 Opinion, which was inadvertently issued without pages one through three, and issued his Amended Opinion.

The Deputy Commissioner conducted an evidentiary hearing on November 12, 2015. He determined the claimant suffered a compensable injury by accident to her right knee on November 24, 2014 and was entitled to temporary total disability from January 15, 2015 through March 18, 2015. He concluded the medical evidence failed to satisfy the claimant's burden of proof of disability for any other period, and there were no records in compliance with the Commission's guidelines which prove that the claimant marketed her residual work capacity at any time after the accident.

The claimant requests review.² She maintains the Commission should infer from the medical records and her hearing testimony that she met her burden of proving total disability from November 24, 2014 through January 14, 2015.³

II. Findings of Fact and Rulings of Law

There is insufficient evidence in the record to infer the claimant was totally disabled from November 24, 2014 through January 14, 2015. Although we acknowledge the claimant's testimony that she did not return to work after her compensable injury and that she continued to have symptoms until her surgery on January 15, 2015, this testimony alone is not sufficient to meet her burden of proving she was completely disabled from work during this time period. Similarly, the fact that the medical records reflect she had continuing symptoms and was prescribed medication and a knee brace during this time period does not necessarily indicate that

² We note that we did not consider the claimant's March 31, 2016 letter with attachments in rendering our decision. This letter was not filed in accordance with the Schedule for Written Statements, and the Commission rules do not permit the appealing party to file additional statements subsequent to filing a Written Statement in support of their review.

³ The parties did not appeal the Deputy Commissioner's findings that the claimant suffered a compensable injury by accident to her right knee, she was entitled to temporary total disability benefits from January 15, 2015 through March 18, 2015, she was not entitled to continuing temporary total disability benefits after March 18, 2015 and she did not provide sufficient evidence of marketing efforts; thus, these findings are final and will not be discussed further on review.

she was totally disabled from work. Finally, we are not persuaded to find the claimant was totally disabled simply because the medical records as a whole suggest that the claimant's medical providers did not "follow the protocols of work-status evaluation," as asserted by the claimant on review. (CI's W.S. 1.) It is well-established that the claimant bears the burden of proving her disability and the periods of that disability. Marshall Erdman & Assocs. v. Loehr, 24 Va. App. 670, 679, 485 S.E.2d 145, 149-50 (1997). Given the lack of evidence related to the claimant's work disability from November 24, 2014 through January 14, 2015, we must find the claimant did not meet her burden of proving entitlement to temporary total disability benefits for this time period.

III. Conclusion

The Deputy Commissioner's December 28, 2015 Amended Opinion is **AFFIRMED**.

This matter is removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.