

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

Nov. 1, 2018¹

TERESA BROWN v. FOOD LION #1383
DELHAIZE AMERICA, LLC, Insurance Carrier
DELHAIZE AMERICA, LLC, Claim Administrator
Jurisdiction Claim No. VA00001365627
Claim Administrator File No. 2017143102
Date of Injury July 20, 2017

Vanessa C. Reed, Esquire
Richard M. Reed, Esquire
For the Claimant.

Joshua M. Wulf, Esquire
For the Defendants.

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

Both parties request review of the April 18, 2018 Opinion. The defendants allege the Deputy Commissioner erred in finding the claimant proved an injury by accident arising out of and in the course of her employment and related disability and medical treatment. The claimant contends the Deputy Commissioner erred in finding she was released to light duty work on October 31, 2017, she was not totally disabled on January 3, 2018, and she had a duty to market her residual work capacity. We AFFIRM as MODIFIED.

¹ The Opinion on review was delayed from September 27, 2018 to October 25, 2018 for parties to attempt a resolution through the Alternative Dispute Resolution Department at the Virginia Workers' Compensation Commission.

I. Material Proceedings

The claimant filed a September 21, 2017 claim. She alleged she injured her right knee in a July 20, 2017 work accident. She requested temporary total disability benefits beginning August 16, 2017. A hearing was held on January 23, 2018.

The Deputy Commissioner held the claimant proved a compensable injury by accident when she stepped on a pallet and a slat broke. She weighed conflicting testimony and noted the claimant's account was corroborated by Janet Carter and Harry Hong, who worked with her. The Deputy Commissioner awarded temporary total disability benefits from August 16, 2017 through October 31, 2017.

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II. Findings of Fact and Rulings of Law

A. Injury by Accident

We reviewed the record, including the parties' written recitation of the facts on review. We agree with the Deputy Commissioner's factual findings and legal conclusions.

The defendants argue that even if the claimant told her manager, Harry Hong, about the accident the day it happened, the initial medical records do not corroborate her testimony. They contend that the MRI results led the claimant to report an accident that did not occur. They allege she was uncertain about the date of the accident. They point out she continued to work a full duty job after July 20, 2017.

We find no compelling reason to reverse the Deputy Commissioner's weighing of conflicting evidence. The claimant's testimony was corroborated by Janet Carter and Harry Hong. At the Novant Health UVA emergency department on July 24, 2017, the claimant reported knee

pain that had worsened over the last four days. Her knee was swollen. An MRI on August 7, 2017 revealed a complex tear of the medial meniscus, a sprain of the lateral collateral ligament and a sprain of the medial collateral ligament. We do not believe the claimant found out she had a medial meniscus tear and inappropriately connected it to the incident she reported to her manager on July 20, 2017. We have consistently held that we are not constrained to deny a claim based on medical histories that vary from the claimant's testimony, given the fact that treating physicians are more concerned with the injury, diagnosis, and treatment. Taylor v. Bell BCI Co., LLC, JCN VA02000010256 (April 15, 2014); Green v. Charlottesville City Schs., JCN VA00000406618 (Feb. 8, 2012). We agree with the Deputy Commissioner that the claimant met her burden of proof.

B. Disability

On review, the claimant alleges error in the failure to award additional periods of temporary total disability.² The claimant “bears the burden of proving his disability and the periods of that disability.” Hoffman v. Carter, 50 Va. App. 199, 216, 648 S.E.2d 318, 327 (2007) (quoting Marshall Erdman & Assocs. v. Loehr, 24 Va. App. 670, 679, 485 S.E.2d 145, 149-50 (1997)).

We find the claimant was entitled to an additional Award of compensation beginning January 3, 2018. On that date, the claimant reported persistent right knee pain to her treating physician. In the medical report, Dr. Weidner wrote, “hopefully [she will] continue to get better with more time.” Dr. Weidner executed a disability slip. It stated, “Patient should continue out of work.” His opinion is entitled to great weight. Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App.

² The defendants, in their written statement, only challenge the holding that the claimant proved a compensable injury by accident.

435, 439, 339 S.E.2d 570, 572 (1986). His statement of disability was not directly contradicted by the contemporaneous office note. We disagree with the Deputy Commissioner that the medical records from January 3, 2018 do not support the disability slip and an award for compensation.

Regarding the period between October 31, 2017 and January 3, 2018, there was no opinion from the claimant's treating physician on disability; therefore we find the claimant did not meet her burden of proof.

III. Conclusion

We AFFIRM as MODIFIED the Deputy Commissioner's April 18, 2018 Opinion.

We enter the following amended AWARD.

AWARD

We enter an Award in favor of Teresa Brown, claimant, against Food Lion #1383, employer, and Delhaize America, LLC insurer, providing for payment of compensation as follows, based upon a pre-injury average weekly wage of \$437.02:

1. \$291.35 per week during temporary total disability beginning August 16, 2017 through October 31, 2017, inclusive.
2. \$291.35 per week during temporary total disability beginning January 3, 2018 and continuing until conditions justify modification thereof.

Pursuant to Virginia Code § 65.2-603, medical benefits are awarded for as long as necessary for reasonable, necessary, and authorized treatment causally related to the claimant's July 20, 2017 industrial injury.

We AWARD an attorney's fee of \$1,800, in addition to the \$640 the Deputy Commissioner awarded in the April 18, 2018 Opinion, for a total of \$2,440, to Vanessa C. Reed, Esquire, for legal

services rendered the claimant. The defendant shall deduct the payment from accrued compensation.

This matter is hereby 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.