

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN
Commissioner

Jan. 21, 2021

LARRY KERR v. MAGIC CITY FORD LINCOLN ISUZU TRUCKS
VADA GROUP SELF-INSURANCE ASSOCIATION, Insurance Carrier
PMA MANAGEMENT CORP, TPA, Claim Administrator
Jurisdiction Claim No. VA00001527839
Claim Administrator File No. 0026W72433
Date of Injury: October 15, 2018

Corey R. Pollard, Esquire
For the Claimant.

Travis L. Kline, Esquire
For the Defendants.

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

The defendants requested review of the Deputy Commissioner's September 29, 2020 Opinion and our August 24, 2020 Opinion finding the claimant's injury arose out of his employment. We AFFIRM.

I. Material Proceedings

The claimant, an auto detailer, suffered a fall at the end of his shift on October 15, 2018. He filed claims seeking disability and medical benefits for injuries to his right hip and femur.¹ Following a January 31, 2020 hearing, the Deputy Commissioner denied the claim, finding the accident did not arise out of the claimant's employment. On review, we reversed and remanded to

¹ The claimant also alleged an injury to his right leg. The September 29, 2020 Opinion denied his claim for a right leg injury. This finding has not been appealed and the decision is final.

the Deputy Commissioner “to determine the extent of the claimant’s disabilities and if he is entitled to indemnity benefits during the period claimed.”

The Deputy Commissioner reviewed the evidence² and found the claimant proved he suffered injuries to his right hip and femur as a result of the work accident. The Deputy Commissioner awarded temporary total disability benefits from October 16, 2018, through January 9, 2019.

The defendants requested review, assigning error to our finding that the claimant’s accident arose out of his employment.

II. Findings of Fact and Rulings of Law

We summarily adopt and incorporate by reference our summary of the evidence and our previous finding that the claimant suffered a compensable injury arising out of his employment on October 14, 2018, as set forth in our August 24, 2020 Opinion. In that Opinion, we held: “We find the accident is persuasively explained, that the claimant stepped sideways and dragged his left foot on the slope as he reentered the building. This caused him to lose his balance and fall onto the garage floor. We further find that this satisfies the arising out of test of compensability.” (Op. 5, Aug. 24, 2020.)

In their current request for review, the defendants renew their argument that the claimant’s injury did not arise out of his employment. Although we may revisit our prior finding, we decline the invitation to reconsider our August 24, 2020 Review Opinion or to modify our prior holding

² Upon remand, the Deputy Commissioner wrote to the parties asking them “to advise whether they believe additional evidence or argument is required, or if they have any additional stipulations they wish to submit.” Both parties responded that no additional evidence or supplemental hearing was requested, and they consented to a decision on the record previously developed.

with regard to the issue of whether the claimant's injury arose out of his employment. *See Meidan, Inc. v. Leavell*, 62 Va. App. 436, 442-43 (2013).

Neither party requested review of the Deputy Commissioner's determinations on remand regarding the claimant's injuries and disability. We have reviewed the Deputy Commissioner's Opinion and the evidence in the record and find his conclusions are adequately supported by the record. Accordingly, these findings are upheld on review.

III. Conclusion

The Deputy Commissioner's September 29, 2020 Opinion is AFFIRMED.

An attorney's fee in the total amount of \$1200, including the \$950 awarded by the Deputy Commissioner below, is awarded to Corey Pollard, Esquire, for legal services rendered to the claimant, the payment of which shall be deducted from accrued compensation.

Interest is payable on the award pursuant to Virginia Code § 65.2-707.

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.