VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by RAPAPORT
Commissioner

Jan. 13, 2025*

MASHAALLAH ALIAGHAEI v. FAIRFAX COUNTY PUBLIC SCHOOLS
FAIRFAX COUNTY SCHOOL BOARD, Insurance Carrier
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, Claim Administrator
Jurisdiction Claim No. VA00002199262
Claim Administrator File No. C452015410000101520
Date of Injury: February 15, 2024

Mashaallah Aliaghaei
Claimant, pro se.

Lynn McHale Fitzpatrick, Esquire
For the Defendant.

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

The claimant requests review of the Deputy Commissioner's August 30, 2024 Opinion denying medical benefits and temporary total disability benefits. We AFFIRM.

I. Material Proceedings

The claimant, a school bus driver, filed claims in April 2024 alleging that he sustained a compensable injury by accident to his left foot and knee on February 15, 2024. He sought medical benefits and wage loss benefits. The defendant raised numerous defenses against the claim, including that there was no injury by accident arising out of the employment.

Deputy Commissioner Plunkett conducted an evidentiary hearing on August 26, 2024. She found that the claimant did not sustain a compensable occupational accident as contemplated by the Virginia Workers' Compensation Act (Act). She explained:

* The January 7, 2025 Opinion was VACATED due to the closure of the Commission's main office in Richmond, Virginia.

> [T]here is no dispute that the claimant was at work during his shift when he felt pain. However, not all accidents are compensable merely because they happen at work. To be compensable, there must be some connection between the accident and the work required.
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> We found the claimant's testimony to be candid and forthright. He is employed with Fairfax County as a school bus driver. We credit his testimony that, on February 15, 2024, he drove his bus route, and part of the route was to a recreational center where he parked and then exited the bus to go use the bathroom. The claimant described that while walking to the bathroom, he felt severe pain in his left knee and foot and he could not walk. He needed help and assistance to get back to the bus. . . . [I]n Virginia, if an injury occurs during simple acts such as walking, without more, those injuries are not compensable, and we cannot award benefits. During the claimant's testimony, when asked what he believed caused the accident, he replied that he did not know. On cross-examination, the claimant was asked if he was simply walking and the claimant replied yes, he was walking. Moreover, based on the expert medical opinions, we also credit Dr. Belay's August 20, 2024 provider statement containing his opinion that the claimant's condition is not work related. Based on the evidence presented, we find no work-related exertion or other contributing factors related to the employment.

(Op. 3-4.) The claimant timely requested review. He wrote that his knee injury "was due to an overtime pressure" which "happened over time" as he assisted heavy children on a daily basis.

II. Findings of Fact and Rulings of Law

At the hearing, the claimant testified that as he walked from his bus to a restroom, "I felt, uh, a severe pain in my knee" and left foot. (Tr. 11.) He denied knowing what caused the pain. On cross-examination, the claimant confirmed that he was simply walking.

As stated by the Deputy Commissioner, every injured worker has the burden of showing that "the conditions of the workplace or some significant work related exertion caused the injury." *Plumb Rite Plumbing Serv. v. Barbour*, 8 Va. App. 482, 484 (1989). Simple acts of walking, bending, reaching, or turning, without any work-related exertion or awkward contributing factors, are not considered to be risks of one's employment. *Southside Va. Training Ctr. v. Ellis*, 33 Va.

App. 824, 829 (2000). The legislature did not intend "to make the employer an insurer against all accidental injuries" on the job. *Richmond Mem'l Hosp. v. Crane*, 222 Va. 283, 286 (1981) (quoting *Dreyfus & Co. v. Meade*, 142 Va. 567, 570 (1925)). Instead, the employer is liable "only for such injuries arising from or growing out of the risks peculiar to the nature of the work, in the scope of the workman's employment or incidental to such employment, and accidents to which the employee is exposed in a special degree by reason of such employment." *Id*.

Lastly, we are not persuaded by statements made within the claimant's review request which were not presented to the Deputy Commissioner and do not meet the requirements to accept as after discovered evidence.[1] Moreover, the claimant's new and contradictory allegation of a knee condition that "happened over time" would equally be non-compensable under the Act. To prove an injury by accident, the evidence must demonstrate "(1) an identifiable incident; (2) that occurs at some reasonably definite time; (3) an obvious sudden mechanical or structural change in the body; and (4) a causal connection between the incident and bodily change." *Hoffman v. Carter,* 50 Va. App. 199, 212 (2007) (citing *Chesterfield Cty. v. Dunn*, 9 Va. App. 475, 476 (1990)). An injury due to cumulative trauma, as opposed to a sudden identifiable incident or event, is not compensable as an injury by accident. *Kraft Dairy Grp., Inc. v. Bernardini*, 229 Va. 253 (1985).

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[1] Rule 3.3 of the *Rules of the Virginia Workers' Compensation Commission* pertains to the acceptance of additional evidence after a hearing. This rule provides that such evidence will be considered by the Commission only when it is absolutely necessary and advisable, and the party requesting that the evidence be considered conforms to the rules of the courts of the Commonwealth of Virginia for the introduction of after-discovered evidence. To meet these requirements, the movant must prove the evidence (1) was obtained after the hearing; (2) is not merely cumulative, corroborative, or collateral; (3) could not have been discovered before the hearing by the exercise of reasonable due diligence; and (4) must be of such a character as to produce an opposite result on the merits at another hearing. *Whittington v. Commonwealth*, 5 Va. App. 212, 215 (1987) (citing *Odum v. Commonwealth*, 225 Va. 123, 130 (1983)).

III. Conclusion

The Deputy Commissioner's August 30, 2024 Opinion is AFFIRMED.

This case is ORDERED 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 thirty (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.