

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

Aug. 26, 2026

EMANUEL SAVOY v. ALSCO INC
INDEMNITY INS CO OF N AMERICA (INA INS), Insurance Carrier
HELMSMAN MANAGEMENT SERVICES, Claim Administrator
Jurisdiction Claim No. VA02000041218
Claim Administrator File No. 80DG61371
Date of Injury: February 27, 2024

Andrew S. Kasmer, Esquire
For the Claimant.

Mark McKinley Caldwell, III, Esquire
For the Defendants.

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

The defendants request review of the Deputy Commissioner's March 26, 2026 Opinion finding that the claimant sustained a compensable injury by accident and awarding medical benefits and temporary total disability. We AFFIRM.

I. Material Proceedings

The claimant alleged that he suffered compensable injuries to his back and left shoulder as the result of a February 27, 2024 accident. He sought medical benefits and temporary total disability beginning February 28, 2024 and continuing.

The defendants defended the claim on the grounds that: (1) there was no injury by accident arising out of and in the course of the employment; (2) there was no causal connection between the claimant's injury and his medical treatment or disability; (3) the claimant was not disabled to

the extent alleged and the medical records did not support the period of disability alleged; and (4) the claimant failed to market his residual work capacity.

Following an evidentiary hearing on January 24, 2025, the Deputy Commissioner issued a March 26, 2026 Opinion. She found the evidence supported that the claimant was in the course of his employment on February 27, 2024, when there was a physical altercation between him and his co-worker, DeCarlos Bryant, related to their work duties. She found a preponderance of the evidence supported that DeCarlos, who threw a tall hand truck at the back of the claimant, was the physical aggressor. She found that the claimant was not the instigator of any physical violence, and therefore the assault on the claimant qualified as an injury by accident arising out of and in the course of the employment.

The Deputy Commissioner also found that the claimant sustained injuries to his low back and left shoulder because of the February 27, 2024 accident. Regarding disability, the Deputy Commissioner relied on the opinion of the treating physician, Dr. M. Mike Malek, over the contrary opinion of Dr. Richard Wilson, who conducted a records review. The Deputy Commissioner found the claimant entitled to an award of temporary total disability beginning February 28, 2024 and continuing.

The defendants request review. They assign error to the Deputy Commissioner's finding that the claimant sustained an injury by accident arising out of the employment, her finding that the claimant sustained an injury to his left shoulder, and her reliance on Dr. Malek's opinion over Dr. Wilson's opinion regarding the extent of the claimant's disability.

II. Findings of Fact and Rulings of Law

A. Accident Arising Out of And in the Course of the Employment

“[W]here a claimant’s injuries are incurred during a fight with another employee, those injuries ‘arise out of’ the employment only if the fight ‘[1] was not a mere personal matter, but grew out of a quarrel over the manner of conducting the employer’s business, and... [2] *the injured employee was not responsible for the assault.*’” *Stillwell v. Lewis Tree Serv.*, 47 Va. App. 471, 478 (2006) (quoting *Farmers Mfg. Co. v. Warfel*, 144 Va. 98, 104 (1926)). “[A]n employee is not entitled to workers’ compensation benefits ‘where a [claimant] suffers injuries from an assault when the claimant is himself in fault as the aggressor.’” *Id.* (quoting *Warfel*, 144 Va. at 101). This is because, where the claimant is the aggressor, “the proximate cause of the injury is not the employment, but the fault of the claimant.” *Id.* (quoting *Warfel*, 144 Va. at 101).

The claimant worked for the employer as a delivery driver. He did not always drive the same truck. On February 27, 2024 he began loading a particular truck. His co-worker, DeCarlos, came over and accused him of taking the truck. The claimant told DeCarlos it was not his truck. DeCarlos complained to the boss, Tom. Tom told the claimant to switch trucks. The claimant followed Tom’s order and unloaded materials from the truck into a different truck. DeCarlos returned, and the claimant called him a “snitch.” (Tr. 55.) At the time, the claimant was inside the back of a box truck loading it with goods. DeCarlos jumped on the back of the truck and hit him in the back with a hand cart or hand truck. The hand truck was metal, “about 5-feet[,]” and had big wheels. (Tr. 56.) The hand truck struck the claimant in the back. The claimant does not know what part of the hand truck hit him because his back was turned. After being struck, the claimant hit the metal rails inside the truck with his left shoulder. The claimant went down to his knee, and Carlos

hit him again with the hand truck. The claimant reported the incident twenty minutes later and was asked to leave the workplace. He went to an urgent care facility. The claimant agreed that in his text message statement to the human resources manager, he mentioned being hit in the back with the hand truck but did not state he was hit twice. (Defs.' Ex. 5.)

Devon Corey Dickerson, one of the claimant's co-workers, testified that he was helping the claimant load the truck on February 27, 2024. DeCarlos wanted to drive that particular truck, and they had to switch trucks. Dickerson and the claimant unloaded items from the first truck and loaded them into a different truck. The claimant was upset. DeCarlos and the claimant were "having words." (Tr. 86.) DeCarlos told the claimant that if he called him a snitch again, he was going to "whoop his A." Dickerson testified that "on the dock, we tried to stop [DeCarlos] . . . hold him back, tell him it ain't worth it." (Tr. 95.) DeCarlos stepped on the truck, and he and the claimant continued arguing. The claimant told DeCarlos that "[y]ou don't want to fight or nothing." (Tr. 86.) The claimant stepped around, and then DeCarlos pushed the hand truck, and it hit the claimant in his back. The first hit knocked the claimant forward and down. He could not say the exact location on the claimant's body where the hand truck hit, or whether it was on the right or left side of the claimant's body. The hand truck ricocheted back, and DeCarlos pushed it again. Dickerson was not sure how "extreme" the second hit was. (Tr. 86.) Dickerson testified that he had a clear view of these events.

Henry Lanario, Human Resources Manager, testified that DeCarlos came to his office and wrote a statement on the day of the incident. DeCarlos, writing in the third person, wrote that DeCarlos "moved the handcart out of the way." (Defs.' Ex. 6.) He denied hitting the claimant with

the hand truck. Dickerson sent Lanario a text message stating that “[the claimant] turned his back walking away and then hand truck was pushed at him an[d] hit him n[sic] the back[.]” (Cl.’s Ex. 3.)

On review, the defendants briefly argue that there is evidence this incident “never happened[.]” (Defs.’ W.S. 5.) Alternatively, they contend that the claimant was the aggressor, and therefore the incident did not arise out of the employment. We are not persuaded. DeCarlos’ written statement, denying that the hand truck hit the claimant, is insufficient to overcome the consistent testimony of the claimant and Dickerson. The Deputy Commissioner found Dickerson’s testimony to be “particularly candid[.]” and we likewise find no reason in the record to doubt his testimony. (Op. 11.) We find the evidence established that the claimant was hit in the back by a hand cart pushed by DeCarlos.

Furthermore, we find the claimant was not responsible for the assault. The claimant and DeCarlos were arguing and the claimant called DeCarlos a “snitch.” We do not find that description so extreme as to deem the claimant the instigator of the dispute. There is no evidence that the claimant instigated a physical altercation. (Tr. 55.) Indeed, the claimant had his back turned from DeCarlos when DeCarlos pushed the hand cart towards him. The assault qualifies as an accident arising out of and in the course of the employment.

B. Causally Related Injuries and Disability

The claimant has the burden to prove all aspects of his claim, including causally related injuries, *see Woody v. Mark Winkler Management, Inc.*, 1 Va. App. 147, 150 (1985), and periods of disability, *see Hoffman v. Carter*, 50 Va. App. 199, 216 (2007). The factual determination regarding causation is usually proven by medical evidence. *Clinch Valley Med. Ctr. v. Hayes*, 34 Va. App. 183, 192 (2000) (citing *Reserve Life Ins. Co. v. Hosey*, 208 Va. 568, 570 (1968)).

“Medical evidence is not necessarily conclusive, but is subject to the [C]ommission’s consideration and weighing.” *Hungerford Mech. Corp. v. Hobson*, 11 Va. App. 675, 677 (1991) (citing *Cty. of Spotsylvania v. Hart*, 218 Va. 565, 569-70 (1977)).

The medical evidence reflects that on February 27, 2024, the date of the accident, the claimant was seen at Premier Health Express Oxon Hill for a complaint of lower back pain. He was prescribed baclofen, topical diclofenac sodium, and lidocaine patches. He was excused from work for three days. The claimant testified that he informed the urgent care provider about shoulder pain, but they never checked his shoulder.

On February 29, 2024, the claimant was evaluated by Dr. Malek at Washington Orthopaedic and Knee Clinic. The claimant reported that he was inside his truck and injured his left arm and lower back. Dr. Malek noted some tenderness at the mid arm with some swelling on the lateral aspect of the left arm. His clinical impression was “[p]osttraumatic lumbosacral sprain/strain” and “[p]osttraumatic left arm contusion.” Dr. Malek referred the claimant to physical therapy and placed him off work.

The claimant returned to Dr. Malek’s office on March 13, 2024. He complained of back pain and left shoulder pain. Dr. Malek noted that “[p]atient continues with symptoms in left shoulder and lower back.” Upon examination, Dr. Malek noted the claimant had moderate pain with extreme ranges of motion, lifting arm overhead, and overhead activities. An impingement test was positive and an AC crossover adduction test was also positive. Dr. Malek diagnosed the claimant with a lumbar sprain and sprain of left shoulder. He recommended continuation of physical therapy and continued to place the claimant off work. Dr. Malek’s recommendations remained the same at an April 3, 2024 visit. On April 24, 2024, Dr. Malek observed “Upon

examination he has protrusion of his left distal clavicle and it seems this was missed when he was seen at the urgent care and X-Rays were not obtained.” Dr. Malek sent the claimant for an x-ray of his left shoulder. In addition to the lumbar sprain and left shoulder sprain, Dr. Malek diagnosed left AC separation. He continued to place the claimant off work. The claimant returned to Dr. Malek for an office visit on May 15, 2025. The x-ray was not mentioned in the office visit note. Dr. Malek recommended continued physical therapy and prescribed lidocaine ointment and ibuprofen for use as needed. He continued to place the claimant off work. His recommendations were reiterated on June 12, 2024 and July 10, 2024.

On August 14, 2024, Dr. Malek noted that the claimant remained symptomatic and a hearing on his case had been postponed. He encouraged low impact exercises and activity modification. He placed the claimant off work and noted that the treatment plan was “pending authorization.” Dr. Malek responded to a questionnaire from claimant’s counsel on August 20, 2024. He wrote that he diagnosed the claimant with “[l]umbar sprain” and “[l]eft shoulder arthropathy post traumatic” caused by the February 27, 2024 incident. He indicated the claimant was totally restricted from working from February 29, 2024 to the present and continuing. He recommended continuation of physical therapy and imaging studies for both the lumbar spine and left shoulder, with further recommendations to be made following review of the images.

On September 11, 2024, Dr. Malek noted that the claimant remained symptomatic in his left shoulder and lower back although physical therapy had decreased his pain and increased his motion. The claimant followed up with Dr. Malek on October 9, 2024, November 20, 2024, and January 8, 2025. The claimant remained symptomatic. Dr. Malek repeated his recommendations and continued to place the claimant off work.

Dr. Malek testified via deposition on December 19, 2024. He testified that he continued to treat the claimant but recommended an x-ray and MRI to determine the exact diagnosis. Dr. Malek testified that until the diagnostic studies were done, all he could do was prescribe medication. Dr. Malek testified he “will not send him to work unless I know exactly what I’m . . . treating him for.” (Dep. 25.) When asked whether he would release the claimant to work if he did not have to lift or operate anything with his left arm, Dr. Malek testified that he “won’t send somebody to work half, you know, fifty percent of an individual.” (Dep. 26.) He testified that his diagnosis remains lumbar sprain and left shoulder arthropathy, post-traumatic. Based upon the claimant’s complaints, he felt that the claimant had a structural change to his back and left arm, although he does not know the exact nature of the structural damage.

The claimant testified at hearing that he has not had the MRI recommended by Dr. Malek because it was denied.

Dr. Wilson, Physical Medicine and Rehabilitation Specialist, reviewed records as well as the transcript of Dr. Malek’s deposition. He provided a January 20, 2025 report at the defendants’ request. Dr. Wilson opined that the claimant’s injuries from the February 27, 2024 event “consisted only of minor, self-limited soft tissue injuries which are best described as contusion (*bruises*) & he possibly suffered an equally minor & self-limited lumbar (*low back*) sprain/strain.” He noted that, on the date of injury, the claimant did not complain of left upper extremity symptoms to the urgent care evaluator, whose discharge diagnosis was “*pain in the lower back*.” Dr. Wilson opined that “Dr. Malek has not offered sufficient medical reasoning which supports his vague contention that Mr. Savoy must have underlying structural damage due to the reported as injuring events.” Dr. Wilson further stated that “[i]f Mr. Savoy had been significantly or substantially injured on

02/27/24, his condition would have deteriorated to the degree that by now the underlying findings would have been identified with imaging and/or medical testing which would have been completed with a degree of urgency” Dr. Wilson found “no reasonable evidence” supporting that the claimant injured his left arm/shoulder/upper extremity on February 27, 2024. He opined that the claimant did not require medical care beyond the initial urgent care evaluation, and that there was no support for any degree of medically necessary physical restrictions.

On review, the defendants argue that Dr Malek’s diagnoses and opinions on work capacity should be given very little weight. They urge us to rely on Dr. Wilson’s conclusions instead, find that the claimant did not suffer a left shoulder injury in the accident, and was disabled for only two to three weeks following the incident.

Upon consideration of the record as a whole, we find the evidence preponderates to establish that the claimant suffered a left shoulder injury in the accident. While left shoulder complaints were not recorded at the Urgent Care visit, left arm complaints were recorded by Dr. Malek just two days later. The claimant consistently complained of left shoulder pain at his follow-up visits with Dr. Malek, and Dr. Malek recorded positive findings upon examination of the claimant’s left shoulder.

Dr. Malek has examined the claimant numerous times since the injury, while Dr. Wilson did not examine the claimant. Although Dr. Malek has not ascertained the exact nature of the claimant’s shoulder injury, Dr. Malek explained that he has recommended diagnostic imaging for this purpose. Dr. Wilson’s opinion that the claimant’s injury would have been confirmed with urgently-obtained diagnostic testing ignores the fact that the claimant did not obtain such testing because the insurance carrier denied the claim. We give preponderating weight to Dr. Malek’s

opinion as the claimant's treating physician and find the claimant proved a compensable left shoulder injury.

We further credit Dr. Malek's opinion regarding the claimant's disability. We recognize the Deputy Commissioner felt that some of Dr. Malek's philosophy regarding work restrictions "seems disconnected from the reality of capacity[,]" particularly his response when asked about sending the claimant back to work with restrictions preventing use of the injured arm. (Op. 17) However, Dr. Malek's records reflect that the claimant remains symptomatic. Dr. Malek indicated he would assess the claimant's work capacity once diagnostic imaging is completed to confirm the nature of the claimant's injury. That such imaging has not been completed and the claimant remains restricted from working, is due to the defendant's denial of the claim. *Cf. Crawford v. Contemporary Nursing Sols.*, JCN 240-56-70 (July 18, 2011) ("[t]he employer will not be heard to deny responsibility for treatment of the work injury and then assert the absence of interim medical reports as a basis for denying continuing disability that may be reasonably inferred from the medical records as a whole."). Finally, and significantly, Dr. Malek is the claimant's treating physician, and there is no credible opinion in the record contradicting his opinion that the claimant remains restricted from working.

For these reasons, we affirm the Deputy Commissioner's decision.

III. Conclusion

The Deputy Commissioner's March 26, 2026 Opinion is AFFIRMED.

From accrued compensation, an attorney's fee in the total amount of \$12,500, which includes the \$11,500 awarded by the Deputy Commissioner below, shall be deducted and paid directly to Andrew S. Kasmer, Esquire, for legal services rendered to the claimant.

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 Clerk's Offices of the Commission of the Court of Appeals of Virginia.