demonstrated that the referral to physical therapy was for consultation and treatment and is therefore medical treatment and the responsibility of the defendants.

Below, the Deputy Commissioner was not persuaded that the referral was for treatment but was solely for assignment of a permanent impairment rating. Consequently, she denied the claim, citing longstanding Commission authority for the proposition that a visit to a physician for the sole purpose of securing a disability rating is not medical treatment under Virginia Code § 65.2-603. *See Thompkins v. DBHDS\E. State Hosp.*, JCN 2388388 (Feb. 19, 2014); *Harris v. Cnty. of Henrico*, JCN VA010-0242-5961 (June 22, 2011); *Anderson v. Atl. Waste Disposal*, VWC File No. 218-46-84 (Mar. 15, 2006); *Morgan v. Proffitt's, Inc.*, VWC File No. 180-18-10 (Dec. 28, 2005).

We agree that the evidence supports the Deputy Commissioner's conclusion that the referral was solely for the performance of a functional capacity evaluation (FCE) to assess and assign a permanent partial disability rating. We likewise agree that, in denying the claim, the Deputy Commissioner interpreted existing Commission authority appropriately. Indeed, the Commission has frequently held that FCEs for the sole purpose of providing an impairment rating are not the defendants' responsibility. "Since [an] evaluation to get a permanency rating is not related to treatment but to support [a] claim for additional benefits under the Act, we find it is not the employer's responsibility." *Sutherland v Craft Machine Works, Inc.*, VWC File No. 194-35-92 (May 28, 2004) (citing *Gaylor v. Altadis USA*, VWC File No. 206-55-56 (July 21, 2003)).

Heretofore, this Commissioner has adopted the rationale that examinations for the sole purpose of establishing a permanent partial disability rating are neither medical treatment nor the

employer's responsibility. *Thompkins*, JCN 2388388. It has been a position to which Commissioner Marshall noted his dissent.

I deem this question to merit further consideration, and I depart from my prior ruling. As justification for this reversal of course, I cite four grounds. First, obligating the claimant to pay the cost associated with securing a disability rating offends the Act's fundamental premise that the financial burden resulting from a worker's compensable accident or disease be borne by industry. *Humphrees v. Boxley Bros. Co.*, 146 Va. 91, 96 (1926). The Act's "intent and purpose" is to make "business bear the pecuniary loss, measured by the payment of compensation" for accidental injuries suffered by employees engaged in the employer's service. *Honaker & Feeney v. Hartley*, 140 Va. 1, 8 (1924). Consistency with this formative principle dictates that we not carve from the Act an exception so as to saddle the injured worker with the expense associated with securing a benefit expressly provided by the Act.

Virginia Code § 65.2-503 dictates the specific number of weeks of compensation to which an employee is entitled for the permanent loss of listed bodily members.[3] Securing that compensation mandates evidence that the claimant "has achieved maximum medical improvement and his functional loss of capacity be quantified or rated." *Cafaro Constr. Co. v. Strother*, 15 Va. App. 656, 661 (1993) (citing *Hungerford Mechanical Corp. v. Hobson*, 11 Va. App. 675, 677-78 (1991)). The evidence before us establishes the claimant attained maximum improvement but without a quantified rating, the claimant cannot obtain an intended benefit occasioned by his work-related injury. Consistency with the principle that the employer bears the financial burden

[3] For the loss of a leg, the claimant receives 175 weeks. Va. Code § 65.2-503(B)(13).

occasioned by the compensable accident mandates that the claimant not bear the cost necessary to secure a benefit intended under the Act.

Secondly, we conclude that our prior decisions which compel a permanently injured employee to finance the evaluation necessary to secure a disability rating applied too myopic a view as to what benefits are afforded under § 65.2-603. The rulings have been predicated upon the conclusion "that a visit to a physician for the sole purpose of proving a disability rating does not constitute medical treatment under Va. Code § 65.2-603." *Harris*, JCN VA010-0242-5961 (citing *Anderson*, VWC File No. 218-46-84) (additional citations omitted)). However, the Act does not define what is "necessary medical attention." We have not otherwise so narrowly interpreted that language as to limit what is covered to only that care which advances the claimant on the path to recovery. We have, for instance, read into § 65.2-603 an obligation for the employer to provide transportation to and from medical care, whether mileage reimbursement, the cost of taxi service, ambulance or airplane. *Hamil v. Lowe's of N. Manassas VA #0397*, JCN 2087339 (May 30, 2003); *Montgomery v. Hausman Corp.*, 52 O.I.C. 183 (1970); *Penley v. Handcraft One Hour Cleaners*, 49 O.I.C. 257 (1967). We have likewise held in numerous cases that necessary medical attention includes diagnostic tests to determine whether symptoms are causally related to an accident. Such testing remains the employer's financial responsibility *even if it establishes that the diagnosed condition is causally unrelated to a compensable injury. Deel v. Vansant Lumber Co., Inc.*, VWC File No. 176-45-42 (Dec. 21, 1999); *Smith v. Cameron Glen Care Ctr.*, VWC File No. 171-35-05 (May 29, 1997); *Donisi v. Branch Iron Works*, VWC File No. 165-41-72 (July 2, 1996); *Garcia-Arana v. Mary Washington College*, 70 O.I.C. 282 (1991). These rulings comport with our charge to interpret the Act's provisions liberally in harmony with its humane purpose and for the benefit

of employees. *Dixon v. Norfolk Shipbuilding & Dry Dock Corp.*, 182 Va. 185 (1944); *Chalkley v. Nolde Bros.*, 186 Va. 900 (1947); *Bailey v. Stonega Coke & Coal Co.*, 185 Va. 653 (1946). Why then discard humane and liberal interpretation when it relates to the treating physician's effort to assess the degree of injury so the claimant may receive a benefit offered by the Act?

One may argue that, while transportation advances the cause of treatment and so logically falls under the Act's medical provision, an FCE only assesses the degree to which the compensable injury impairs the claimant's ability to function. Consequently, the argument would go, it is impermissible for us to define as medical attention that which merely measures impairment. But yet, we regularly do just that. We confront the precise issue of whether an FCE is medical treatment in the context of employers' applications seeking to terminate the payment of compensation. Virginia Code § 65.2-603(B) reads in relevant part, "The unjustified refusal of the employee to accept such medical service . . . when provided by the employer shall bar the employee from further compensation until such refusal ceases . . . ."

We have defined an FCE as necessary medical attention when adjudicating an employer's application contending that a failure to attend or cooperate with the evaluation constituted a refused medical service justifying the termination of the payment of compensation. In *Devaughn v. Fairfax County Public Schools*, JCN VA00000940928 (May 25, 2017), the Commission addressed such an application, holding that "the FCE was a reasonable and necessary examination to evaluate the claimant's residual injury and work capacity" and that "the claimant's compliance at the FCE would have provided (the treating physician) with a basis for informed recommendations regarding work and activity limits . . . ." Consequently, "the claimant's refusal to undergo the [ ] FCE

prescribed by [the treating physician] was an unjustified refusal of medical treatment as contemplated by the Virginia Workers' Compensation Act."

Similarly, an employer's application seeking to terminate disability benefits for refusal of medical treatment was based upon inconsistent efforts during an FCE in *Wilson v. Wilson*, JCN VA00001230856 (Feb. 2, 2018). This Commissioner wrote, "A functional capacities evaluation is 'a reasonable and necessary diagnostic study to evaluate the claimant's residual injury, in that it would provide the physician with a basis for informed recommendations regarding work and activity limits, and potentially help him evaluate the claimant's credibility regarding subjective complaints for the purpose of more accurately diagnosing the nature of and appropriate treatment for the residual injury.'" *Id.* (quoting *Flinchum v. New Energy Bedrooms, Inc.*, VWC File No. 202-67-61 (July 2, 2002), *aff'd*, No. 2036-02-3 (Va. Ct. App. Apr. 1, 2003)). "Thus, a claimant's conduct at an FCE may be considered 'tantamount to a refusal of medical treatment' justifying suspension of his compensation benefits if the claimant's conduct or non-cooperation has affected his recovery . . . ." *Wilson,* JCN VA00001230856 (further citations omitted).

Consequently, our third reason for finding an employer responsible for an FCE to assess the claimant's impairment is a matter of fundamental fairness. A treating physician may order an evaluation to assess the claimant's ability to function before issuing a release to work. We cannot portray such an FCE as § 65.2-603 medical treatment for the purpose of suspending the compensation of the claimant who refuses to attend or fails to cooperate while concurrently denying that the same evaluation qualifies as medical treatment when it is needed for the claimant to secure compensation justly due under the Act.

Finally, we find that holding an employer liable for an evaluation of the claimant's permanent disability promotes our charge to administer the Act and to adjudicate issues and controversies. Va. Code § 65.2-201. We similarly find that such a rule serves the interests of all parties, including employers. Heretofore, an employer's refusal to pay for the evaluation liberates the claimant from the informed eye of the treating doctor and frees the claimant to seek an opinion from any medical provider the claimant is willing to pay, including those reputed to render suspiciously elevated ratings. Confronted with a claim for § 65.2-503 benefits predicated on such a rating, the employer is left with little choice but to finance an evaluation of their own thus rendering their parsimony for naught. This state of affairs deprives the Commission of a rating from the treating physician, the doctor most familiar with the claimant's injury and to whose opinion we customarily afford great evidentiary weight. We are frequently left to weigh wildly disparate ratings from competing professionals who saw the claimant only once, if at all.

We are mindful that the specific question before us – whether an FCE ordered by the treating physician to assess an injured worker's permanent injury qualifies as medical attention under § 65.2-603 - is not expressly addressed in the Act. We are similarly aware that we do not enjoy the latitude to enlarge, alter or amend the Act's provisions. *Humphries v. Newport News Shipbuilding & Dry Dock Co.*, 183 Va. 466 (1945); *Van Geuder v. Commonwealth*, 192 Va. 548 (1951). If, ultimately, we are told that we have exceeded the bounds of our charge to interpret the Act liberally and humanely then so be it. If so, however, an employer confronted with a claimant who frustrates efforts to secure work restrictions should consider this case before filing an application to suspend compensation. Absent a persuasive explanation as to why an assessment of

work capability is medical treatment but an assessment of permanent injury is not, the outcome may run headlong into the universal tenet of jurisprudence: what's sauce for the goose . . .

For these reasons, the decision below is REVERSED.

III. Conclusion

29 RFN 10/8/2021

The Deputy Commissioner's March ~~3~~, 2021 Opinion is REVERSED.

This matter is hereby removed from the review docket.

MARSHALL, COMMISSIONER, Concurring:

I join the wise reasoning of Commissioner Newman, who so artfully recites the common sense of our longstanding interpretation and practice. For 87- and one-half years preceding the 2005 decision in *Morgan v. Proffitts*, VWC File No. 180-18-10 (Dec. 28, 2005), no one seriously doubted that undergoing examination with a physician or his designate to obtain a rating of permanent partial disability was reasonable and necessary medical attention under the Workers' Compensation Act.[4] Unfortunately, that sound principle temporarily was derailed by a strained

[4] In *Morgan*, the Commission firmly established a new legal rule holding evaluations for permanent partial disability were not "necessary medical attention," under the Workers' Compensation Act. A couple of earlier decisions pointed in this direction, but either represented dicta or were distinguishable. In *Harris v. Goodyear Tire and Rubber*, 79 O.W.C. 198 (2000), which was cited in *Morgan*, the pronouncement that a permanent partial disability evaluation was not necessary medical attention was dicta. The primary basis for rejecting the claim for the evaluation was that the claimant sought it on his own, without any authorization or request from his treating physician. The Commission in *Morgan* noted this, admitting, "We have held in the past that *under some circumstances*, a visit to a physician for the sole purpose of proving a disability rating does not constitute medical treatment under Code §65.2-603." *Id.* (emphasis added).

and unreasonably narrow interpretation. Faced with a decision that plainly frustrates, rather than supports, what we are charged to do, it is fitting that we set the law right.

To hold that assessing the degree of permanent partial disability is a litigation cost, rather than a conclusory phase of medical treatment is, and always was, bunkum. I understand the reasoning of the dissent, but believe it rests upon a distinction without a difference. We cannot hold a physician's determination of what injured workers can and cannot do is "necessary medical attention," but ascertaining the quantity of their permanent disability is not. Both are of the same character; they are but two sides of the same coin. Both assess the injured worker's physical capacities – the former in terms of what, if any, residual capacity remains and the latter in terms of what has been lost. And both are a necessary antecedent to the awarding of compensation granted in the Workers' Compensation Act.

To illustrate the unbalanced and unjust nature of the holding in *Morgan*, an employer can insist that a claimant return to his physician to obtain physical restrictions in order to expedite a return to work,[5] and at the same time, it can deny responsibility for an assessment of permanent disability. Contrary to the holding in *Morgan*, the employer cannot have it both ways.

The Commission cannot thwart the just and fair administration of the Act by imposing arbitrary transaction costs and economic barriers which cannot be overcome by the very people the law was intended to protect.[6] I mean no disrespect to Commissioner Rapaport, who fairly has

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[5]*See Va. Code* §65.2-603(B), providing for a suspension of compensation if an injured worker unjustifiably refuses necessary medical attention.

[3]The Commission nitpicked the issue of expenses in *Gaylor v. Altadis*, VWC File No. 206-55-56 (July 21, 2003). The claimant's counsel drafted a letter seeking the physician's opinion on permanent partial disability. The Commission held the employer was not responsible for the cost of a physician's report. However, there was *no* apparent dispute over the employer's responsibility for the physician's examination to determine permanent disability. *Gaylor* demonstrates how the Commission's rulings on report fees improperly morphed into a broader, but

attempted to lay out his position. It is the legal rule announced in *Morgan*, created out of nothing, that I find unconscionable and totally inconsistent with the purposes of the Workers' Compensation Act. Commissioner Newman's careful reasoning pays heed to our solemn duty to respect and uphold the beneficent and humane purposes of the Act.

I stand by the reasoning of my dissent in *Thompkins v. DBHDS Eastern State Hospital*, JCN 2388388 (Feb. 19, 2014), *Lewis v. City of Fairfax*, JCN VA00001241447 (Dec. 6, 2017), and my dissent in part in *Beasley v. Virginia Natural* Gas, *Inc.*, JCN VA02000019406 (June 2, 2016).

RAPAPORT, COMMISSIONER, Dissenting:

I must respectfully dissent.

I recognize and appreciate the explanations carefully crafted by my colleagues. However, I strongly disagree with the abrupt departure from longstanding, existing case law simply on current musings of what should qualify as necessary medical attention under the Act. One cannot overlook the resulting complexities of this unjustified desertion.

As acknowledged by the majority, and properly held by the Deputy Commissioner, the Commission has repetitively instructed that "a visit to a physician for the sole purpose of securing a disability rating is not medical treatment under Virginia Code § 65.2-603." (Maj. Op. 5.) These numerous, previous decisions were rendered by competent Deputy Commissioners and Commissioners interpreting the law as we all have been equally tasked to do.

The current matter comes before the Commission on the claimant's application. It is the claimant's burden to demonstrate that the treatment for which he seeks payment is causally related

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unwarranted, pronouncement holding injured workers responsible for the cost of permanent partial disability examinations.

to the accident, necessary for the treatment of his compensable injury, and recommended by an authorized treating physician. *See Volvo White Truck Corp. v. Hedge*, 1 Va. App. 195, 199-200 (1985).

The majority opinion agrees, and specifically acknowledges, that the referral was solely for the performance of the Functional Capacity Evaluation ("FCE") to assess and assign a permanent partial disability rating. Virginia Code § 65.2-603(A)(1) provides that "[a]s long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician . . . and such other necessary medical attention." An employer has a mandatory, statutory duty to compensate an injured employee for medical expenses causally related to the injury, but any recommended treatment must be "reasonable, necessary, and related to the industrial accident." *Dunrite Transmission v. Sheetz,* 18 Va. App. 647, 649 (1994). When an injured employee requests the payment of specific medical treatment, he must demonstrate that the treatment "is causally related to the accident, is necessary for treatment of his compensable injury, and is recommended by an authorized treating physician." *Portsmouth (City of) Sch. Bd. v. Harris*, 58 Va. App. 556, 563 (2011). Here, the claimant has not made the requisite showing because he failed to prove that the FCE was medically necessary. *See Haftsavar v. All Am. Carpet & Rugs, Inc.*, 59 Va. App. 593, 599 (2012) (stating the claimant must prove "by a preponderance of the evidence that disputed treatment was medically necessary").

The majority outlines four reasons for the reversal of years of precedent. None address the crucial question: Is the requested FCE "necessary medical treatment"?

First, the majority asserts that placing the financial responsibility for the FCE on the claimant "offends the Act's fundamental premise that the financial burden resulting from a

worker's compensable accident or disease be borne by industry." (Maj. Op. 5-6.) The legislature has made clear what the employer's responsibility is under the Act. The responsibility is to pay for necessary medical treatment. Seeking to ascertain an injured employee's work restrictions and capabilities is necessary medical treatment. Determining whether the claimant may have a ratable permanent partial impairment is not. The majority correctly notes that Virginia Code § 65.2-503 sets forth the number of weeks of compensation an injured worker may receive for a permanent partial loss of use. They reason that since the Act provides for a possible rating, then the employer should necessarily be responsible to determine whether the claimant has a ratable impairment under the Act and, if so, the percentage of any such rating. This rationale is flawed and inconsistent in other cases applying the Act. For example, Virginia Code § 65.2-603(A)(3) provides that an injured employee is entitled to vocational rehabilitation services under certain circumstances. In *Salem v. Colegrove*, 228 Va. 290, 294 (1984), the Supreme Court of Virginia held that although the claimant's treating physician had recommended "[job retraining," the employee was not entitled to reimbursement for his expenses because the doctor never suggested such a program was medically necessary. The facts of the case *sub judice* similarly lack any determination of medical necessity.

Next, the majority declares that the prior decisions on this very issue take "too myopic" a view of the benefits afforded under Virginia Code § 65.2-603. I find the majority's holding to be too expansive. I am mindful that "[t]he Workers' Compensation Act is to be liberally construed for the benefit of employees." *Gallahan v. Free Lance Star Publ'g Co.*, 41 Va. App. 694, 698 (2003) (quoting *Waynesboro Sheriff's Dep't v. Harter*, 1 Va. App. 265, 269 (1985)). Further, I recognize that the purpose of the Act is to protect the employee. *Ellis v. Commonwealth Dep't of*

Highways, 182 Va. 293, 303 (1944). Therefore, the Commission and the Courts have interpreted the Act consistent with the "beneficent purpose" for which the General Assembly enacted it: to attain "a humanitarian end." *Simms v. Ruby Tuesday, Inc.*, 281 Va. 114, 119 (2011) (quoting *A. Wilson & Co. v. Mathews*, 170 Va. 164, 167 (1938)). However, we cannot forget that, "[w]hile the provisions of the . . . Act are to be liberally construed in favor of the [worker], liberality of construction does not authorize the amendment, alteration, or extension of its provisions. It does not go to the extent of requiring that every claim asserted should be allowed." *Humphries v. Newport News Shipbuilding & Dry Dock Co.*, 183 Va. 466, 479 (1945).

The General Assembly did not provide for payment by the employer to determine what, if any, permanent partial disability may be assigned under Virginia Code § 65.2-503. Given the length of time that our precedent has so held such cost to be borne by the claimant, it is unreasonable to suddenly conclude that the legislature intended to shift the cost to the employer. Again, the statute tasks the employer with the responsibility of paying for reasonable and necessary medical treatment. The majority ignores the unambiguous language of Virginia Code § 65.2-603 regarding "necessary medical treatment" and unilaterally grafts onto the statute an additional cost which the legislature has clearly declined to impose.

The majority's third point relies upon "fundamental fairness." (Maj. Op. 9.) They point to the situation where a treating physician may refer a claimant for an assessment of their work capacity before issuing a release to return to work and that should the claimant fail to attend such an evaluation, the employer may suspend compensation for such refusal. Such reasoning conflates refusing a medical evaluation for purposes of returning to work, and if so, with what, if any restrictions, to securing a permanency rating that, in this case, has no bearing on the claimant's

work capabilities or possible restrictions. The majority fails to identify any obstacle to the claimant receiving medical treatment, or how his care or recovery from his injuries has been delayed or impaired. The record is clear that the claimant has been working at his regular pre-injury employment without restrictions since December 15, 2015. (Cl.'s Pos. S. 2.) While one can be empathetic, empathy does not allow judicial activism to expand legislative parameters or the prior adjudications of the scope of those parameters.

Lastly, the majority finds that holding the employer liable for an evaluation of his permanent disability promotes our charge to administer the Act and to adjudicate issues and controversies. Va. Code § 65.2-201. We have adjudicated permanency ratings for the past 100 years. Sometimes we are asked to weigh wildly disparate ratings from multiple physicians. The majority finds that by requiring the claimant to bear the cost of such evaluation, the Commission is "deprive[d]" of a rating from the treating physician. (Maj. Op. 10.) This is an assumption with little foundation. Indeed, it is the rare case where the treating physician has not rendered an opinion unless the doctor simply refuses to do so. In such instances, the party responsible for payment of the physician's fee is meaningless as it is not a question of payment but one of unwillingness to render such an opinion. The majority also overlooks Virginia Code § 65.2-606 which allows "[t]he Commission or any member thereof . . . [to] appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination and to testify in respect thereto . . . ."

The majority concludes with a veiled admonishment that, in the event a claimant is held responsible for the cost of an FCE for purposes of obtaining a rating, then employers in future cases may find an unsympathetic Commission if a challenge is made that a claimant is

"frustrat[ing] efforts to secure work restrictions." (Maj. Op. 10.) This statement highlights the majority's misunderstanding of the difference between seeking necessary medical treatment and seeking a permanency rating. If this were a case where the treating physician had ordered the FCE to determine the claimant's work restrictions or capabilities, I would certainly find the employer responsible. Those are not our facts, and that is not the issue before the Commission.

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.

Step 2

When does Medicare coverage start?

Medicare coverage starts based on when you sign up and which sign-up period you're in.

Your first chance to sign up (Initial Enrollment Period)

Generally, when you turn 65. This is called your Initial Enrollment Period. It lasts for 7 months, starting 3 months before you turn 65, and ending 3 months after the month you turn 65.

My birthday is on the first of the month.

> **Avoid the penalty**
> If you miss your 7-month Initial Enrollment Period, you may have to wait to sign up and pay a monthly late enrollment penalty for as long as you have Part B coverage. The penalty goes up the longer you wait. You may also have to pay a penalty if you have to pay a Part A premium, also called "Premium-Part A."

When your coverage starts

The date your coverage starts depends on which month you sign up during your Initial Enrollment Period. **Coverage always starts on the first of the month.**

If you qualify for Premium-free Part A: Your Part A coverage starts the month you turn 65. (If your birthday is on the first of the month, coverage starts the month before you turn 65.)

Part B (and Premium-Part A): Coverage starts based on the month you sign up:

If you sign up:	Coverage starts:
Before the month you turn 65	The month you turn 65
The month you turn 65	The next month
1 month after you turn 65	2 months after you sign up
2 or 3 months after you turn 65	3 months after you sign up

Signing up for Premium-free Part A later

You can sign up for Part A any time after you turn 65. Your Part A coverage starts 6 months back from when you sign up or when you apply for benefits from Social Security (or the Railroad Retirement Board). Coverage can't start earlier than the month you turned 65.

I have a Health Savings Account (HSA). ⓘ

After your Initial Enrollment Period ends, you can only sign up for Part B and Premium-Part A during one of the other enrollment periods.

Between January 1-March 31 each year (General Enrollment Period)

You can sign up between January 1-March 31 each year. This is called the General Enrollment Period. Your coverage starts July 1. You might pay a monthly late enrollment penalty, if you don't qualify for a Special Enrollment Period.

Get details about the late enrollment penalties.

Special Situations (Special Enrollment Period)

There are certain situations when you can sign up for Part B (and Premium-Part A) during a Special Enrollment Period without paying a late enrollment penalty. A Special Enrollment Period is only available for a limited time. If you don't sign up during your Special Enrollment Period, you'll

have to wait for the next General Enrollment Period and you might have to pay a monthly late enrollment penalty.

Check my specific situation to find out when to sign up.

When coverage starts

Generally, coverage starts the month after you sign up.

Special situations include:

You have health insurance through a job and still working – You can sign up for Part A and Part B any time as long as:

- You have group health plan coverage.
- You or your spouse (or a family member if you're disabled) is working for the employer that provides your health coverage.

You also have 8 months to sign up after you or your spouse (or your family member if you're disabled) stop working or you lose group health plan coverage (whichever happens first).

Your 8-month Special Enrollment Period starts when you stop working, even if you choose COBRA or other coverage that's not Medicare.

You're a volunteer, serving in a foreign country – Contact Social Security for more details.

Certain situations for people with TRICARE – Contact TRICARE for more details.

> **Situations that don't qualify for a Special Enrollment Period:**
>
> - Your COBRA coverage or retiree coverage ends. If you miss your 8-month window when you stopped working, you'll have to wait until the next General Enrollment Period to sign up.
> - You have or lose your Marketplace coverage.
> - You have End-Stage Renal Disease (ESRD). Learn more about Medicare coverage for ESRD.

Joining a plan

Once you sign up for Medicare Part A, there are certain times you can sign up for a Medicare Advantage Plan or Medicare drug plan (Part D). Find out when you can join a plan.

What do you want to do next?

Next Step

Ready to sign up

Get forms & details about signing up for Part A and Part B

Get Ready to Sign Up

Take Action

Estimate my eligibility

Get estimate of when you can first sign up

Get My Sign Up Date

More Details

Get more coverage

Compare options & when to get coverage

Explore Coverage Options

Site Menu

Take Action

CMS & HHS Websites

Helpful Links

Medicare.gov

A federal government website managed and paid for by the U.S. Centers for Medicare and Medicaid Services. 7500 Security Boulevard, Baltimore, MD 21244

Virginia Workers' Compensation Commission
333 E. Franklin St., Richmond, Virginia 23219
Phone: 1-877-664-2566
Website: http://www.workcomp.virginia.gov
WebFile: https://webfile.workcomp.virginia.gov

GUIDELINES ON LOOKING FOR LIGHT DUTY WORK

1. **Good faith search for work -** An employee who is partially disabled – *i.e.*, unable to perform his or her regular job, but able to perform light duty work – is required to seek light duty work in good faith in order to receive disability benefits if he or she is not on an open award.

2. **Factors the Commission considers -** In deciding whether a partially disabled employee has made a reasonable effort to find suitable light duty employment the Commission considers such factors as : (1) the nature and extent of the disability; (2) the employee's training, age, experience and education; (3) the nature and extent of the job search; (4) the availability of jobs in the area suitable for the employee considering his disability; (5) any other matter affecting the employee's capacity to find suitable employment.

3. **Evidence of reasonable effort** – It is presumed that in most cases the claimant made a reasonable effort to market residual work capacity when he or she (a) registered with the Virginia Employment Commission within a reasonable time after being released to return to work and (b) directly contacted at least five potential employers per week where the employee has a reasonable basis to believe that there might be a job available that he or she might be able to perform[1] and (c) if appropriate, contacted the pre-injury employer for light duty work.

4. **Keep a job search record** – Information provided by the injured worker about job contacts should be supported by facts, preferably in writing, about the names of the employers contacted; where the employers are located; the date(s) the contact was made; whether the contact was in person, by phone or via internet; and the result of the contact.

5. **Pre-injury skills or experience -** Where an injured worker has particular job skills or training, he or she may focus the search on jobs in that field if there are jobs in that field that the employee can reasonably perform. However, if within a reasonable amount of time the search is not successful, the employee must broaden the search beyond that field.

6. **Method of Contacting Employers -** Employer contacts should be conducted in a manner reasonably suited to the position sought, which in some cases may be personal visits. In other cases, contacts may be by phone, internet, mail, or through employment agents such as union hiring halls.

7. **Attempt to maximize earnings -** If the employee locates and takes a job that pays substantially less than his or her pre-injury job, the employee should continue looking for a higher paying job.

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[1] It is not necessary to prescreen or know for certain of the availability of a suitable job.

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

July 21, 2020

MIRIAN HERNANDEZ v. LOUDOUN COUNTY PUBLIC SCHOOLS
LOUDOUN COUNTY PUBLIC SCHOOLS, Insurance Carrier
PMA MANAGEMENT CORP, TPA, Claim Administrator
Jurisdiction Claim No. VA00001297984
Claim Administrator File No. 0018W99825
Date of Injury February 3, 2017

Casey Duchesne, Esquire
For the Claimant.

J. David Griffin, Esquire
For the Defendants.

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

The defendants request review of a January 30, 2020 Opinion. They ask the Commission independently to assess the credibility of the claimant's testimony. They assign error to findings the claimant reasonably marketed her residual work capacity and her current disability was causally related to the accident. We AFFIRM.

I. Material Proceedings

The Commission approved a July 2, 2019 Stipulated Order which granted the claimant medical benefits and temporary total disability from October 30, 2018 through May 27, 2019. The parties agreed the claimant sustained a neck strain, a left shoulder strain, and a right shoulder strain in the February 3, 2017 work accident. They agreed she was released to light duty work on

May 27, 2019 and returned to work with the employer at her pre-injury wage. Her permanent impairment claim was held in abeyance.

On August 8, 2019, the claimant filed a claim for temporary total disability from June 20, 2019 and continuing.[1] The defendants denied a causal relationship between the alleged disability and medical treatment and the compensable accident. They denied a causal relationship between injury to the head, neck and back and the work accident. They asserted the claimant failed reasonably to market her residual work capacity when released to light duty.[2]

The Deputy Commissioner found the claimant was temporarily and partially disabled due to the compensable accident as of May 22, 2019, based on work restrictions assigned by Stephanie Clop, M.D. The claimant was limited to lifting, pushing or pulling of no more than twenty-five pounds, no weed whacking, no use of a floor buffer/floor stripping machine, and no pushing lawn mowers. She continued to complain of bilateral shoulder pain. She attempted to return to work under these restrictions, but was able to work for only four weeks due to increased pain. The Deputy Commissioner credited the claimant's testimony that the employer was unable to accommodate her restrictions. He found "the medical record supports the conclusion that the claimant's shoulder pain complaints as of May 2019 and related work restrictions were causally related to the left and right shoulder strain injuries that were subsequently included as part of the July 2, 2019 Stipulated Order." (Op. 9.)

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[1] As the claimant requested, the Commission retained jurisdiction over the permanent partial disability claim.

[2] The defendants also alleged the claimant's authorization to work in the United States had expired. The claimant produced documentation of Temporary Protected Status ("TPS") for citizens of El Salvador. It indicated an automatic extension of TPS and work authorization through January 4, 2021. TPS continued so long as a preliminary injunction in *Ramos et al. v. Nielsen, et al.*, No. 18-cv-01554 (N.D.Cal. Oct. 3, 2018), remained in effect. (Cl. Ex. 2.) After discussion and review of the documentation, defense counsel accepted the claimant's proffer. (Tr. 6.) The Deputy Commissioner found the claimant remained eligible to work in the United States. (Op. 2.)

The Deputy Commissioner found the claimant reasonably marketed her residual capacity from June 24, 2019 through November 15, 2019. Given her limited English language skills, lack of a home computer, and her limited employment skills, he found she made a good faith effort to find employment within her residual capacity by averaging slightly more than four in-person contacts per week with potential employers. (Op. 11.) He entered an award of temporary total disability beginning June 24, 2019 and continuing. (Op. 11.)

The defendants request review.

II. Findings of Fact and Rulings of Law

We reviewed the entire record. We summarize to explain our decision.

A. Causal Relationship Between Injury and Restrictions

The factual determination regarding causation is usually proven by medical evidence. *Clinch Valley Med. Ctr. v. Hayes*, 34 Va. App. 183, 191-92 (2000); *Reserve Life Ins. Co. v. Hosey*, 208 Va. 568, 570 (1968). "The testimony of a claimant may be considered in determining causation, especially where the medical testimony is inconclusive." *Hoffman v. Carter*, 50 Va. App. 199, 214-215 (2007) (quoting *Dollar Gen. Store v. Cridlin*, 22 Va. App. 171, 177 (1996)).

In reviewing medical evidence, the Commission gives great weight to the opinion of the treating physician. *Pilot Freight Carriers, Inc. v. Reeves*, 1 Va. App. 435, 439 (1986). Furthermore, medical evidence is neither dispositive nor required to establish causation. *Dollar Gen. Store v. Cridlin*, 22 Va. App. 171, 177 (1996). "Medical evidence is not necessarily conclusive, but is subject to the commission's consideration and weighing." *Hungerford Mech. Corp. v. Hobson*, 11 Va. App. 675, 677 (1991).

Dr. Jeffrey Berg referred the claimant to Dr. Stephanie Clop, a physiatrist, on September 12, 2017 for additional treatment of right trapezial and myofascial pain syndrome. The claimant began regular treatment with Dr. Clop on November 29, 2017. Dr. Clop investigated and prescribed conservative treatment. On October 31, 2018, Dr. Clop recommended cognitive behavioral therapy for central sensitization. She wrote "B shoulder UE and C/upper thoracic area is related to the initial injury unfortunately this is a[n] overuse syndrome and once she continued to work mainly using L upper extremity, the same symptoms occurred there." The claimant's symptoms were out of proportion to shoulder and cervical MRI findings and did not meet the clinical picture of complex regional pain syndrome ("CRPS"). Dr. Clop sent the claimant to Dr. Bhatia, a pain specialist, for a second opinion.

On November 19, 2018, Dr. Bhatia examined the claimant. His impressions were chronic pain syndrome, cervicalgia, and thoracic pain. The claimant's cervical and shoulder MRI exams were abnormal, but he stated her pain and disability were more than usual for similar pathology. She did not meet diagnostic criteria for CRPS. He had no explanation for her level of pain and disability. He recommended a repeat cervical MRI and a thoracic spine MRI. He released the claimant to sedentary duty with no use of either upper extremity.

Dr. Clop recommended a functional capacity evaluation on December 19, 2018. Although the FCE was not designated, Dr. Fitzgerald, who evaluated the claimant on November 29, 2019, reviewed a January 18, 2019 FCE which questioned the reliability of the claimant's reports of pain and disability, recommended work hardening. and found the claimant was unable to perform the physical demands of her job. Dr. Clop's records did not address the FCE.

On January 30, 2019, the claimant agreed to undergo a cervical epidural steroid injection ("ESI"). If the injection afforded relief, Dr. Clop planned a second and third one. If it was of no benefit, she would recommend work hardening and stated the claimant would be at maximum medical improvement ("MMI").

At her March 13, 2019 visit, the claimant reported improvement in bilateral upper extremity pain and increased range of motion since a cervical ESI. Dr. Clop planned a second injection. The claimant was to start work conditioning four hours per day "to evaluate lifting techniques and modifications that might be necessary for her line of work." Dr. Fitzgerald reviewed a May 10, 2019 report that indicated slow progress after twenty work conditioning sessions.

The claimant reported an unrelated accident at her May 22, 2019 visit with Dr. Clop, resulting in an L1-L2 wedge compression fracture and a four week stay in rehabilitation. The claimant gained twenty pounds in rehab and was able to walk with a walker. Dr. Clop recommended she return to work with maximum lifting, pushing or pulling twenty-five pounds, no weed whacking, no use of a floor buffer/floor stripping machine, and no pushing a lawn mower. She planned to assess the claimant in six weeks for possible return to full duty. The parties agreed the claimant resumed light work on May 27, 2019.

After four weeks, the claimant returned on June 19, 2019. She reported she was very limited at work "unabl[e] to do continuous vacuuming, sweeping, any activity that requires strength increases her pain." She complained of significant right shoulder pain. Dr. Clop issued the same work restrictions but added "no repetitive forward flexion and extension of shoulder with force, no push/pull greater than 25 pounds." She recommended a permanent partial disability rating and

a neurological evaluation for a central cause of the pain "due to extensive symptoms without any findings."

The claimant reported progression of her symptoms since being out of work at a July 17, 2019 visit. Dr. Clop clarified her restrictions, continued the twenty-five-pound lifting, pushing or pulling restriction and adding "no repetitive shoulder height or above shoulder height activity." Dr. Clop told the claimant the pain was muscular and "just since they cause pain doesn't mean she can't due [sic] them." Dr. Clop stated being out of work had not improved anything and relaxing and not doing anything had increased her pain. She noted significant dramatization of pain.

On August 28, 2019, Dr. Clop continued the diagnoses of right shoulder bursitis and myalgia, other site. She noted the claimant's report of improvement after the epidural steroid injections but stated after three injections, the claimant was actually able to do less. Dr. Clop clarified the claimant's restrictions: "max lifting < 20 pounds on occasion push pull 25 pounds, no repetitive shoulder height or above shoulder height activity."

On October 30, 2019, Dr. Clop opined the claimant had reached maximum medical improvement. She continued the same restrictions and recommended vocational training. Dr. Clop noted "[a]fter light touching, and RTC testing which she only gave 2-3/5 strength, she was in tears and c/o pain."

Dr. Kevin Fitzgerald, a physiatrist, evaluated the claimant and reviewed records on November 29, 2019. He noted the claimant had a symptom complex including severe neck pain, bilateral shoulder pain, bilateral arm pain, paresthesias in the bilateral upper limbs, weakness in the bilateral upper limbs, hypersensitivity, and emotional lability. He opined there were no

objective findings which would preclude the claimant from performing her pre-injury job. He stated all limitations were exclusively related to subjective symptoms.

The Deputy Commissioner implicitly found the claimant's testimony to be credible. Her actions, including her return to work after the accident, to light duty in May 2019, and her participation in work conditioning, all support her credibility and evidence a genuine effort to recover from her injuries.

Based on all of the evidence, we accept Dr. Clop's opinion causally relating the claimant's symptoms to the accident over the opinion of Dr. Fitzgerald. Dr. Clop is the longtime treating physician with many visits and observations of the claimant. She continued to assign work restrictions related to the accident. We AFFIRM the Deputy Commissioner's Opinion on causation.

B. Adequacy of Marketing

In order to receive disability benefits, a partially disabled employee must prove he made reasonable efforts to market his residual earning capacity. *Nat'l Linen Serv. v. McGuinn*, 8 Va. App. 267, 272 (1989). What constitutes reasonable marketing effort depends on the facts and circumstances of each case. *Greif Cos. v. Sipe*, 16 Va. App. 709, 715 (1993) (citing *Great Atl. & Pac. Tea Co. v. Bateman*, 4 Va. App. 459, 467 (1987)). The Commission considers various factors, such as the nature and extent of the claimant's disability; his training, age, experience, and education; the extent of, and intent in, his job search; the availability of jobs in his area; and "any other matter affecting the employee's capacity to find suitable employment." *McGuinn* at 272-73.

The claimant worked for the employer since January 2010. Before the accident, she performed custodial duties. As head custodian, she organized and directed custodians at her school

and planned work for custodians who worked after-hours events. She left written instructions for after-hours work. Her custodial duties included everything to do with cleaning. She cleaned up messes, mopped, cleaned restrooms, took out the garbage, mowed lawns, salted or shoveled when it snowed, weeded, trimmed and prepared areas in spring.

After her return to light duty work in late May 2019, she worked as a custodian. Her job required cleaning of desks, dusting, and cleaning rooms, as it was summer. The use of her hands caused her much pain and took a toll on her shoulder. She testified she could not continue after four weeks instead of the planned six weeks.

The claimant advised the employer her restrictions and it could not accommodate them. She understood that she could lift up to "fifteen pounds, ten pounds." (Tr. 11.) She stated she would estimate how much items weighed and try to lift. She began to look for work after the employer stopped offering light duty.

The claimant has a high school education from her native El Salvador. She testified through an interpreter. She speaks some English and reads and writes English, "but not perfectly." (Tr. 14.) Long ago, she trained to give elderly people physical care. In New York, she packed plastic bags and worked at a chocolate company. She worked at a car dealership in Northern Virginia. The claimant has no computer at home. She owns and uses a smart phone. She has a driver's license. The employer offered no job training or help with her job search.

When the employer could no longer accommodate her restrictions, the claimant testified she began to look for work to support her two children. She went to various businesses and asked about light duty jobs as a cashier, host, or receptionist. She has no cosmetology license, but she applied as a helper in beauty shops. She completed her job log in Spanish, and her daughter filled

in parts in English. The claimant documented 88 job contacts over the period June 24, 2019 through November 15, 2019,[3] an average of slightly more than four per week.

The claimant was uncertain whether she registered with the Virginia Employment Commission. She filled out a large number of papers at school with the help of an assistant principal. She agreed she answered "no" when asked at her deposition whether she registered with the Virginia Employment Commission. She agreed she looked for work in person without checking for job openings first. She can type to complete forms on a computer and expressed willingness to work with computers or as an instructor if she received training.

Under all of the circumstances, the claimant reasonably marketed her remaining work capacity. She explained that she needed a job to support her family. The type of work she sought was within her remaining work capacity. Though unsophisticated in some respects, her attempt to find suitable light duty work was reasonable and sufficient. We AFFIRM.

III. Conclusion

We AFFIRM the January 30, 2020 Opinion.

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

We award an attorney's fee of $1,000 to Casey Duchesne, Esquire, for legal services to the claimant on review. This is in addition to the attorney's fee of $3,360.00 and costs of $243.68 awarded by the Deputy Commissioner, for a total award of attorney's fees and costs of $4,603.68, which shall be deducted from accrued compensation and paid directly to the attorney.

This matter is hereby removed from the review docket.

[3] The hearing took place on December 4, 2019.

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 and the Court of Appeals of Virginia.

COURT OF APPEALS OF VIRGINIA

UNPUBLISHED

Present: Judges Huff, AtLee and Athey
Argued by videoconference

LOUDOUN COUNTY PUBLIC SCHOOLS AND
PMA MANAGEMENT CORPORATION

v. Record No. 0870-20-4

MIRIAN HERNANDEZ

MEMORANDUM OPINION* BY
JUDGE GLEN A. HUFF
JANUARY 12, 2021

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

J. David Griffin (Winchester Law Group, P.C., on brief), for appellants.

Krista DeSmyter (Casey Duchesne; ChasenBoscolo Injury Lawyers, on brief), for appellee.

Loudoun County Public Schools and its insurer (collectively, "employer") appeal from the decision of the Workers' Compensation Commission (the "Commission") that awarded Mirian Hernandez ("claimant") temporary total disability benefits. Employer contends the Commission erred in finding that claimant's disability is causally related to her workplace accident and that claimant adequately marketed her residual work capacity. Because both of the Commission's findings are supported by credible evidence in the record, this Court affirms.

I. BACKGROUND

"Under settled principles of appellate review, we consider the evidence in the light most favorable to [claimant] as the prevailing party before the commission." Layne v. Crist Elec. Contractor, Inc., 64 Va. App. 342, 345 (2015). So viewed, the evidence shows the following:

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

Claimant worked as a custodian for employer. She suffered a compensable neck strain, left shoulder strain, and right shoulder strain as a result of a workplace accident on February 3, 2017. By agreement, the Commission entered a stipulated order awarding claimant a lifetime medical award for those injuries as well as a period of temporary total disability benefits from October 30, 2018, through May 27, 2019.

Shortly after her injury, claimant began treating with Dr. Stephanie Clop. Dr. Clop diagnosed claimant with cervical/thoracic myofascial pain involving the upper trapezius, rhomboid, serratus and teres minor as a result of her workplace injury. Claimant continued to experience significant pain in her shoulders and neck and continued treating with Dr. Clop throughout 2018 and 2019. On May 22, 2019, Dr. Clop prescribed "work hardening" and issued a set of work restrictions for claimant:

> Recommended return to work max lifting, push, pull 25 lb., no weed whacking, to include no using floor buffer/stripper machine, no pushing lawn mower. Will reevaluate in 6 weeks to see if able to increase work status to full duty.

On May 27, 2019, claimant returned to work for employer in a light-duty capacity.

Claimant returned for an appointment with Dr. Clop on June 19, 2019. Claimant noted significant and increasing pain as a result of her return to work. Claimant stated that she was "unabl[e] to do continuous vacuuming, sweeping, [and that] any activity that requires strength increases her pain." Dr. Clop maintained the same diagnoses from claimant's earlier injury. Dr. Clop also continued to opine that her ongoing pain was causally related to the February 2017 accident. In addition to the existing work restrictions, Dr. Clop instructed claimant to avoid any repetitive forward flexion and extension of her shoulder with more than twenty-five pounds of force.

Due to increased pain, claimant only continued her employment with employer for four weeks. Additional follow-up appointments with Dr. Clop in July and August yielded similar

results. At each, claimant presented with significant bilateral shoulder pain. At both appointments, Dr. Clop maintained the same diagnosis of claimant's injury and same general work restrictions. Following an October 30, 2019 appointment, Dr. Clop opined that claimant had reached maximum medical improvement from her injuries and that her continuing pain was a result of the February 3, 2017 injury.

At the request of employer, claimant was examined by Dr. Kevin Fitzpatrick on November 22, 2019. Dr. Fitzpatrick noted that claimant suffered from "fairly mild structural abnormalities . . . and very mild degenerative changes." He opined that claimant's complaints of pain did not appear to match the extent of her physical injuries. Dr. Fitzpatrick opined that "[t]here are no objective findings that would preclude [claimant] from returning to her prior job" and that her limitations are "exclusively related to subjective symptoms."

Claimant attempted to find other work. Claimant is an El Salvadorian immigrant who is currently afforded temporary protective status by the federal government. She has a high school education and "speaks some English and reads and writes English, 'but not perfectly.'" She does not have a home computer, but she does own a smart phone.

Claimant looked for employment in-person. She went to various businesses and asked about employment that would comply with her physical restrictions, such as cashier, hostess, receptionist, or beauty shop assistant positions. She also applied for a front desk job with employer. In total, claimant documented eighty-eight job contacts from the period of June 24 to November 15, 2019—an average of slightly more than four per week. However, claimant did not register with the Virginia Employment Commission ("VEC"). Nor did claimant utilize the internet or newspaper to find advertised job openings.

On August 8, 2019, claimant filed for temporary total disability benefits beginning on June 20, 2019. Employer defended on the grounds that claimant failed to establish a causal

connection between her current injuries and the February 3, 2017 workplace accident and that claimant failed to adequately market her residual work capacity. Deputy Commissioner Kennard found that claimant satisfied her burden of proof and awarded benefits. On review, the Commission unanimously affirmed. This appeal followed.

II. STANDART OF REVIEW

Factual findings of the Commission are binding if supported by credible evidence in the record. Wagner Enterprises, Inc. v. Brooks, 12 Va. App. 890, 894 (1991). In determining whether credible evidence exists, this Court will not "retry the facts, reweigh the preponderance of the evidence, or make its own determination of the credibility of the witnesses." Id. Furthermore, "[t]he fact that there is contrary evidence in the record is of no consequence if there is credible evidence to support the commission's finding." Id.

III. ANALYSIS

Employer contends that claimant's current disability is not causally related to her February 2017 workplace accident. Employer also argues that claimant failed to adequately market her residual work capacity. Furthermore, employer contends that the Commission "erred in not following its own procedures regarding marketing and discovery." This Court disagrees.

A. Causation

Employer first contends that claimant's current disability is not causally related to her February 2017 workplace accident. Employer avers that none of the medical opinions are able to pinpoint an objective cause of claimant's continuing bilateral shoulder pain. Therefore, employer argues, claimant failed to prove the necessary causal relationship between her current disability and her workplace accident.

The Commission's determination regarding causation is a finding of fact. Tex Tech Industries, Inc. v. Ellis, 44 Va. App. 497, 504 (2004). "A finding of causation need not be based

exclusively on medical evidence, and *a claimant is not required to produce a physician's medical opinion in order to establish causation*." Id. (citing Dollar Gen'l Store v. Cridlin, 22 Va. App. 171, 176-77 (1996)). Causation may be proven by direct or circumstantial evidence, including by either medical evidence or testimony of the claimant. Id.

Claimant suffered a compensable neck strain, left shoulder strain, and right shoulder strain as a result of a workplace injury by accident on February 3, 2017. Since that injury, claimant has seen a number of physicians and repeatedly complained of significant bilateral shoulder pain. Most significantly, claimant had continued to see Dr. Clop for ongoing treatment. On October 30, 2019, Dr. Clop opined that claimant had reached maximum medical improvement and that her continuing bilateral shoulder pain resulted from her prior injury.

Furthermore, claimant testified regarding the extent of her injuries. She noted that she has had continuing bilateral shoulder pain since her injury in February 2017. While that pain has never abated, she testified that it was significantly exacerbated when she attempted to return to her job with employer, even in a light-duty capacity. Claimant explained that, in addition to worsening pain, she also experienced reduced strength in her arms and a general inability to complete even her restricted, light-duty work requirements.

This evidence is sufficient to sustain the Commission's finding that claimant's injury is causally related to her workplace accident. That employer introduced contrary evidence is of no import because this Court does not reweigh the evidence on appeal. See Wagner Enterprises, 12 Va. App. at 894.

B. Adequacy of Marketing

Employer argues that the Commission erred in two respects in finding that claimant met her burden of proving that she adequately marketed her residual work capacity. First, employer contends that the Commission violated its own rules and procedures regarding the number of

weekly job contacts required.[1] Second, employer challenges the sufficiency of the evidence that claimant adequately marketed her residual work capacity. Both arguments are without merit.

To receive continued workers' compensation benefits, a claimant is required to prove that they have made a "reasonable effort" to market their residual work capacity. Nat'l Linen Serv. v. McGuinn, 8 Va. App. 267, 269 (1989).

> [I]n deciding whether a partially disabled employee has made reasonable effort to find suitable employment commensurate with his abilities, the commission should consider such factors as: (1) the nature and extent of employee's disability; (2) the employee's training, age, experience, and education; (3) the nature and extent of employee's job search; (4) the employee's intent in conducting his job search; (5) the availability of jobs in the area suitable for the employee, considering his disability; and (6) any other matter affecting employee's capacity to find suitable employment.

Id. at 272. The Commission's determination of whether a claimant has adequately marketed their residual work capacity is a finding of fact. Ford Motor Co. v. Favinger, 275 Va. 83, 88 (2008).

Here, claimant has a significant disability that limits her ability to do physical tasks as simple as vacuuming. She has limited job training and only a high school education. That limitation is further compounded by the fact that she is an immigrant with temporary protected status. Claimant has limited abilities with the English language. She has no home computer to utilize in her job search. Nonetheless, claimant reported eighty-eight job contacts between June 24 and November 15, 2019, an average of more than four per week.

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[1] In its assignment of error, employer also contends that the Commission erred in considering one page of claimant's job contact history form that employer contends was not properly disclosed during discovery. That issue is briefly noted in employer's statement of facts. However, employer does not pursue that argument at any point in its analysis of the merits of this case. Therefore, employer has abandoned that argument and this Court declines to address it.

Given these circumstances, this Court cannot say that there is no credible evidence to support the Commission's finding that claimant adequately marketed her residual work capacity. It is true that claimant did not register with the VEC or utilize the newspaper or internet to search job postings. However, there is no statutory requirement that she do so in order to be eligible for workers' compensation benefits. Furthermore, the existence of contrary evidence is "of no consequence" when credible evidence supports the Commission's finding. Wagner Enterprises, 12 Va. App. at 894.

Employer's contention that the Commission failed to apply its own procedures is equally unpersuasive. As employer notes, the Commission has propagated guidelines on looking for light-duty work. These guidelines recommend that claimants register with VEC and apply for five jobs per week, on average. Employer contends that the Commission erred by finding that claimant adequately marketed her residual work capacity when she failed to meet the requirements of these guidelines.

However, the guidelines on looking for light-duty work are exactly what they purport to be: guidelines. They are not a set of mandatory requirements that are dispositive in any claim. Indeed, the mandatory application of one-size-fits-all guidelines that employer suggests the Commission was bound to do would plainly violate the requirements of McGuinn. Under that case, the determination of whether a claimant has adequately marketed their residual work capacity relies on the totality of the circumstances surrounding that claimant's specific disability, training, education, abilities, effort and intent in their job search, as well as the relative availability of work in the area. McGuinn, 8 Va. App. at 272.

In sum, the Commission properly considered the entire breadth of applicable factors in this case and found that claimant adequately marketed her residual work capacity. Because that finding is supported by credible evidence, it is binding on this Court.

IV. CONCLUSION

The Commission's findings that claimant's disability is causally related to her workplace injury by accident and that claimant adequately marketed her residual work capacity are both supported by credible evidence in the record. Therefore, this Court affirms the judgment of the Commission.

Affirmed.

Code of Virginia
Title 65.2. Workers' Compensation
Chapter 4. Occupational Diseases

§ 65.2-402.1. Presumption as to death or disability from infectious disease. (2021 updated section)

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resultin in total or partial disability of, any (i) salaried or volunteer firefighter, or salaried or volunteer emergency medical services personnel; (ii) member of the State Police Officers' Retirement System; (iii) member of county, city, or town police departments; (iv) sheriff or deputy sheriff; (v) Department of Emergency Management hazardous materials officer; (vi) city sergeant or deputy city sergeant of the City of Richmond; (vii) Virginia Marine Police officer; (viii) conservation police officer who is a full-time swor member of the enforcement division of the Department of Wildlife Resources; (ix) Capitol Police officer; (x) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority (xii) officer of the police force established and maintained by the Norfolk Airport Authority; (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority; (xv) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education; (xvi) correctional officer as defined in 53.1-1; or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this subsection, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this subsection gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whethe the person gave notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. 1. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease that is covered by this title unles such presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19 and signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in § 9.1-101; (iii) correctional officer, as defined in § 53.1-1; or (iv) regional jail officer shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19, an incubation period consistent with COVID-19, and signs and symptoms of COVID-19 that require medical treatment.

C. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

D. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

E. 1. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

2. The presumptions described in subdivision B 1 shall not apply to any person offered by such person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the U.S. Food and Drug Administration, unless the person is immunized or the person's physician determines in writing that the immunization would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization shall disqualify the person from the presumptions described in subdivision B 1.

F. 1. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions; (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons; (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed; and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

2. The presumptions described in subdivision B 1 shall apply to any person entitled to invoke them for any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2021, and;

a. Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19; or

b. On or after July 1, 2020, and prior to December 31, 2021, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

3. The presumptions described in subdivision B 2 shall apply to any person entitled to invoke them for any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to December 31, 2021, the claimant received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs and symptoms of COVID-19 that required medical treatment.

G. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably

be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

2002, c. 820; 2003, c. 842; 2007, cc. 87, 365; 2009, c. 417; 2011, c. 211; 2012, c. 776; 2015, cc. 38, 502, 503, 730; 2020, cc. 958, 1150 1152; 2021, Sp. Sess. I, cc. 507, 526, 547.

3/15/202

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to workers' compensation; COVID-19; health care providers.

[H 932]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-402.1 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-402.1. Presumption as to death or disability from infectious disease.

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, or salaried or volunteer emergency medical services personnel; (ii) member of the State Police Officers' Retirement System; (iii) member of county, city, or town police departments; (iv) sheriff or deputy sheriff; (v) Department of Emergency Management hazardous materials officer; (vi) city sergeant or deputy city sergeant of the City of Richmond; (vii) Virginia Marine Police officer; (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (ix) Capitol Police officer; (x) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority; (xii) officer of the police force established and maintained by the Norfolk Airport Authority; (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority; (xv) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education; (xvi) correctional officer as defined in § 53.1-1; or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this subsection, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this subsection gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. 1. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19 and signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in § 9.1-101; (iii) correctional officer, as defined in § 53.1-1; or (iv) regional jail officer shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19, an incubation period consistent with COVID-19, and signs and symptoms of COVID-19 that require medical treatment.

C. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory,

salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

D. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

E. 1. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

2. The presumptions described in subdivision B 1 shall not apply to any person offered by such person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the U.S. Food and Drug Administration, unless the person is immunized or the person's physician determines in writing that the immunization would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization shall disqualify the person from the presumptions described in subdivision B 1.

F. 1. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions; (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons; (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed; and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

2. The presumptions described in subdivision B 1 shall apply to any person entitled to invoke them for any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, ~~2021~~ *2022*, and;

a. Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19; or

b. On or after July 1, 2020, and prior to December 31, ~~2021~~ *2022*, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

3. The presumptions described in subdivision B 2 shall apply to any person entitled to invoke them for any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to December 31, 2021, the claimant received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs and symptoms of COVID-19 that required medical treatment.

G. Persons making claims under this title who rely on such presumption shall, upon the request of

appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

And You Thought You Knew Everything

06.09.2022

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ATTACHMENTS

COURT OF APPEALS OF VIRGINIA

UNPUBLISHED

Present: Chief Judge Decker, Judges Humphreys and O'Brien
Argued by videoconference

KATHERINE HAZELWOOD AS ADMINISTRATOR
OF THE ESTATE OF JACOB HAZELWOOD

v. Record No. 0389-21-2

VIA SATELLITE, INC. AND
TRAVELERS CASUALTY AND SURETY COMPANY

MEMORANDUM OPINION* BY
JUDGE ROBERT J. HUMPHREYS
OCTOBER 5, 2021

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Seth Carroll (Commonwealth Law Group, PLLC, on briefs), for appellant.

Lisa M. Frisina (K. Elizabeth O'Dea; PennStuart, on brief), for appellees.

On March 28, 2019, Jacob Hazelwood ("Hazelwood") was seriously injured in an automobile accident in the course of his employment with Via Satellite ("Via") and his injuries eventually led to his death. The administrator of his estate, Katherine Hazelwood, filed a series of claims with the Workers' Compensation Commission ("the Commission"). The Commission found that Hazelwood did not prove that his injuries arose out of his employment and denied his claims. On appeal, Hazelwood argues that the Commission erred in determining that he failed to establish by a preponderance of the evidence that his injuries arose from an actual risk of his presence on a public street. He also argues that the Commission erred in finding the evidence insufficient to demonstrate that Hazelwood's speed caused the automobile accident.

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

I. BACKGROUND

On the day of the accident, Hazelwood was employed by Via and was living with his mother in her house. That morning, Hazelwood left his mother's residence in a company van to travel to a customer's house to perform work for Via. Hazelwood drove west down Lenning Road, a two-lane road. The speed limit was 55 miles per hour ("mph").

Approximately ten to eleven minutes after leaving his home, Hazelwood entered a curve on Lenning Road. The speed limit on the curve was the same as on the rest of the road, 55 mph. While traveling the curve, Hazelwood's vehicle left the westbound lane, crossed the center line into the eastbound lane, and struck a tractor trailer in a head-on collision. A Virginia State Police officer, Special Agent David Lacks ("Special Agent Lacks"), responded to the scene; when he arrived, both the company van and the tractor trailer were on fire. Hazelwood was airlifted to a burn center where both of his legs were amputated, and he was treated for third-degree burns. He remained in the hospital for twenty-seven consecutive weeks before eventually succumbing to his injuries.

Hazelwood was not known to be physically or mentally impaired at the time of the accident. The company van contained a GPS device that transmitted the vehicle's speed and location to a cloud-based system approximately every ninety seconds. Sometime in the ninety seconds after the last GPS "ping" was recorded, Hazelwood crossed the center line of the road and collided with the tractor trailer. The last set of data transmitted from the GPS showed that Hazelwood was traveling at 55 mph.

Hazelwood filed four claims for his injuries, seeking medical benefits, permanent partial disability benefits, temporary total disability benefits, and death benefits.

A hearing was held before the Commission. Multiple individuals testified at the hearing including the responding officer, the director of finance and administration for Via