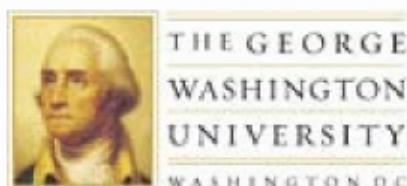


# The Burger Court Opinion Writing Database

*Dillard v. Industrial Commission of Virginia*

416 U.S. 783 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 15, 1973

Re: 73-5412 - Dillard v. Industrial Comm. of Virginia

Dear Bill:

Please join me.

Regards,

WRB

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 7, 1974

Re: No. 73-5412 - Dillard, et al v. Industrial Commission  
of Virginia, et al

Dear Lewis:

Please join me.

Regards,

W.B.P.

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-5412

Circulate:

Recirculated:

John R. Dillard and Willie  
Williams, Etc.,  
Appellants,  
v.  
Industrial Commission of  
Virginia et al. } On Appeal from the United  
States District Court for  
the Eastern District of  
Virginia.

[April 1, 1974]

MR. JUSTICE DOUGLAS, dissenting.

This case involves a class action brought on behalf of all persons who, as a result of sustaining employment related injuries, are recipients of benefits under the Virginia Workman's Compensation Act, Code of Va. § 65.1 *et seq.* The action challenges the constitutionality under the Due Process Clause of the Fourteenth Amendment of that part of the Act allowing a termination of benefit payments by the employer or insurer as a result of an asserted change in condition prior to a full hearing on the alleged change before the Commission. The complaint prayed for an injunction to restrain enforcement of that part of the Act. A three-judge district court was convened, 28 U. S. C. § 2281, and the challenged portions of the Act were found constitutional, one judge dissenting. 347 F. Supp. 71 (ED Va. 1972).

The Act provides a system allowing the employer and the employee to escape personal injury litigation for on-the-job injuries; it provides for the payment of compensation under fixed rules. Once the Industrial Commission approves an award of benefits, the Commission or any party in interest may move for review of the award "on the ground of a change in condition." Code

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF

JUSTICE WM. J. BRENNAN, JR.

April 25, 1974

RE: No. 73-5412 Dillard v. Industrial Comm.

Dear Lewis:

I had expressed the view at conference that perhaps we should reach the merits in any event, but I am completely persuaded by your Memorandum and suggest you convert it into an opinion and I'll be happy to join.

Sincerely,



Mr. Justice Powell  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 25, 1974

73-5412, Dillard v. Va. Industrial Comm'n

Dear Lewis,

I fully agree with the memorandum  
you have circulated in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice Powell

Copies to the Conference

*G*  
CHAMBERS OF  
JUSTICE BYRON R. WHITE.

Supreme Court of the United States  
Washington, D. C. 20543

November 15, 1973

Re: No. 73-5412 - Dillard v. Industrial  
Commission of Virginia

Dear Bill:

I am in doubt about this case and would  
like it to be held pending the other hearing  
cases we have such as Kennedy and Christian.

Sincerely

*Byron*

Mr. Justice Rehnquist

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 24, 1974

Re: No. 73-5412 - Dillard v. Industrial Comm'n

Dear Lewis:

Your suggested disposition of this case  
is satisfactory to me.

Sincerely,



Mr. Justice Powell

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 25, 1974

Re: No. 73-5412 -- Dillard v. Industrial Commission  
of Virginia, et al.

Dear Lewis:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

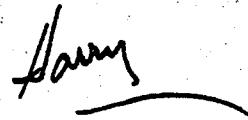
April 25, 1974

Dear Lewis:

Re: No. 73-5412 - Dillard, et al. v.  
Industrial Commission of Virginia

I am in agreement with your proposed disposition of this appeal and would join your memorandum as an opinion for the Court.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 24, 1974

No. 73-5412 DILLARD v. INDUSTRIAL COMMISSION

MEMORANDUM TO THE CONFERENCE:

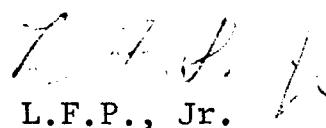
According to my notes, the vote at the Conference was 5 to affirm on the merits of the procedural due process issue, 2 to reverse on the merits, and 2 to remand to the District Court to determine state law. Thurgood, who joined Potter in stating that his preference was to remand, would reverse if we reached the merits. Bill Rehnquist also mentioned the possibility of dismissing the case on Rescue Army, and several Justices, although short of a majority, indicated that they would not object to that disposition.

When the opinion was assigned to me, having voted with the majority to affirm on the merits, I set out to write it on that basis. But upon a more thorough study of the Virginia statutes and case law, and also in light of concessions by the parties, I concluded that a remand as suggested by Potter and Thurgood is the more appropriate disposition of the case. I reached this conclusion because it now seems to me that the District Court unnecessarily decided the procedural due process issue which was submitted by the parties and which prompted our noting jurisdiction and hearing argument.

You will recall the questions raised at oral argument as to whether the employee had the right, regardless of a Commission finding of probable cause to discontinue benefits, to obtain an enforcement order directly from a state court. Section 65.1-100 expressly provides for a summary proceeding before a court to obtain an order enforcing an award of the Commission. Decisions of the Virginia Supreme Court make clear that action by the state courts under § 65.1-100 is ministerial. Rule 13, even if so intended, could not have revoked this statute. Thus, rather than going to a federal district court, the appellant in this case could have walked across Capitol Square in Richmond to the courthouse and obtained an enforcement order, probably in a matter of hours.

Although this right appears to be clearly available under Virginia law, and counsel for both parties virtually conceded it, there is a lingering doubt as to why it was not utilized by appellant. For this reason, it seems appropriate to remand the case to the District Court for a determination of this issue. If that court concludes that a state court enforcement right was available to appellant and those in his class, there is no occasion to reach the procedural due process issue submitted to us.

In short, while I have not changed my view as to the merits and will rewrite my memorandum accordingly if a majority so desires, it does seem to me that the more orderly procedure is to have the District Court do what it should have done in the first instance.



L.F.P., Jr.

LFP/gg

1st DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

**SUPREME COURT OF THE UNITED STATES**

From: Powell, J.

No. 73-5412

Circulated: APR 24 1974

John R. Dillard and Willie  
Williams, Etc.,  
Appellants,  
*v.*  
Industrial Commission of  
Virginia et al.

On Appeal from the United  
States District Court for  
the Eastern District of  
Virginia.

Recirculated: \_\_\_\_\_

[April —, 1974]

Memorandum of MR. JUSTICE POWELL.

Appellants seek to establish that, under the Due Process Clause of the Fourteenth Amendment, Virginia may not permit the suspension of workmen's compensation benefits without a prior adversary hearing. A three-judge United States District Court, over one dissent, rejected appellants' constitutional arguments. 347 F. Supp. 71 (ED Va. 1972). We noted probable jurisdiction. — U. S. — (1974). Although the parties have focused primarily on the due process issue, the briefs and oral arguments have indicated that under state law a claimant whose workmen's compensation benefits have been suspended may have them reinstated by a state trial court pending a full administrative hearing on the merits of his claim. If this is an accurate reading of state law, it is in all probability unnecessary to address any questions of federal constitutional law in this case. Accordingly, the case must be remanded to the District Court for reconsideration.

I

This litigation has centered on the role of the Industrial Commission of Virginia (Commission) in overseeing relationships between workmen's compensation claimants

1  
The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES: Powell, J.

No. 73-5412

Circulated:

Recirculated: APR 25 1974

John R. Dillard and Willie  
Williams, Etc.,  
Appellants,  
v.  
Industrial Commission of  
Virginia et al. } On Appeal from the United  
States District Court for  
the Eastern District of  
Virginia.

[April —, 1974]

MR. JUSTICE POWELL delivered the opinion of the  
Court.

Appellants seek to establish that, under the Due Process Clause of the Fourteenth Amendment, Virginia may not permit the suspension of workmen's compensation benefits without a prior adversary hearing. A three-judge United States District Court, over one dissent, rejected appellants' constitutional arguments. 347 F. Supp. 71 (ED Va. 1972). We noted probable jurisdiction. — U. S. — (1974). Although the parties have focused primarily on the due process issue, the briefs and oral arguments have indicated that under state law a claimant whose workmen's compensation benefits have been suspended may have them reinstated by a state trial court pending a full administrative hearing on the merits of his claim. If this is an accurate reading of state law, it is in all probability unnecessary to address any questions of federal constitutional law in this case. Accordingly, the case must be remanded to the District Court for reconsideration.

I

This litigation has centered on the role of the Industrial Commission of Virginia (Commission) in overseeing relationships between workmen's compensation claimants

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 14, 1974

No. 73-6431 Williams v. Richmond Guano Co.  
(Cert to Va. SC)

file

MEMORANDUM TO THE CONFERENCE:

Petitioner in this case was one of the appellants in Dillard v. Industrial Commission, No. 73-5412, which we handed down on May 15, 1974. The petition arises from the same transaction at issue in Dillard, but it does not raise the same federal questions as were presented by that case. See p. 10, n. 10 of the Dillard opinion.

After the Industrial Commission terminated Williams' entitlement to workmen's compensation benefits on the ground of a change in Williams' condition, Williams appealed to the Virginia Supreme Court. (This invocation of the jurisdiction of the state supreme court occurred shortly after Williams had taken his appeal to this Court). Before the Virginia SC, Williams did not raise the due process, right-to-a-hearing argument that was pressed in Dillard. Rather, he simply challenged the accuracy of the Commission's determination that his condition no longer entitled him to compensation. The Virginia SC affirmed the Commission in a brief order.

In his petition for review of the state court order, Williams again does not raise the claim of right to a hearing presented in Dillard. Indeed, he makes no mention of the Dillard case, although the same counsel represented him in both this petition and in the Dillard appeal. He argues instead that he was denied due process because the Commission considered irrelevant evidence (as a matter of state law) in reviewing his case and because the Virginia SC stated no reasons in affirming the determination of the Commission. These claims either raise no federal issue or are meritless. I will vote to deny.

L.F.P.

L.F.P., Jr.

ss

1  
 To The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Rehnquist, J.

Circulated: 11/14/73

JOHN R. DILLARD AND WILLIE WILLIAMS, ETC.

v. INDUSTRIAL COMMISSION OF Recirculated:  
VIRGINIA ET AL.ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

No. 73-5412. Decided November —, 1973

## PER CURIAM.

Appellant Dillard brought this class action on behalf of himself and all other persons similarly situated, challenging the constitutionality of a rule promulgated by the Industrial Commission of Virginia ("the Commission"). A three-judge court dismissed his complaint, and appellant brought direct appeal to this Court. Without reaching the merits of his contentions, we vacated the judgment and remanded for consideration of mootness. — U. S. —. On remand, the District Court granted petitioner Williams leave to intervene, both as an individual and as a named plaintiff for the class, and determined that the case was not moot. The Court then reinstated its previous opinion, 347 F. Supp. 71 (1972), dismissing the complaint and appellants again appeal. The question presented is whether the Virginia Workmen's Compensation system violates due process by permitting an insurer to discontinue payments to an injured worker upon an *ex parte* finding by the State's Industrial Commission that the worker is no longer eligible.

The Virginia Workmen's Compensation system is a creature of statute,<sup>1</sup> designed to provide a comprehensive

<sup>1</sup> The full text of the Virginia Workmen's Compensation Act may be found in the Code of Virginia, 1950, Title 65.1. The First Workmen's Compensation Act in Virginia was passed in 1918, and the present act constitutes a revision.

14

To: The Chief Justice  
✓ Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

p. 3

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

JOHN R. DILLARD AND WILLIE WILLIAMS, <sup>ETC</sup> CIRCULATED:  
v. INDUSTRIAL COMMISSION OF

VIRGINIA ET AL.

Recirculated: 11/16/73

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA

No. 73-5412. Decided November —, 1973

PER CURIAM.

Appellant Dillard brought this class action on behalf of himself and all other persons similarly situated, challenging the constitutionality of a rule promulgated by the Industrial Commission of Virginia ("the Commission"). A three-judge court dismissed his complaint, and appellant brought direct appeal to this Court. Without reaching the merits of his contentions, we vacated the judgment and remanded for consideration of mootness. — U. S. —. On remand, the District Court granted petitioner Williams leave to intervene, both as an individual and as a named plaintiff for the class, and determined that the case was not moot. The Court then reinstated its previous opinion, 347 F. Supp. 71 (1972), dismissing the complaint and appellants again appeal. The question presented is whether the Virginia Workmen's Compensation system violates due process by permitting an insurer to discontinue payments to an injured worker upon an *ex parte* finding by the State's Industrial Commission that the worker is no longer eligible.

The Virginia Workmen's Compensation system is a creature of statute,<sup>1</sup> designed to provide a comprehensive

<sup>1</sup> The full text of the Virginia Workmen's Compensation Act may be found in the Code of Virginia, 1950, Title 65.1. The First Workmen's Compensation Act in Virginia was passed in 1918, and the present act constitutes a revision.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 25, 1974

Re: No. 73-5412 - Dillard v. Va. Industrial Commission

Dear Lewis:

The disposition of the case which you propose in your memorandum is fine with me.

Sincerely,

*WR*

Mr. Justice Powell

Copies to the Conference