

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DONALD MCALLISTER, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100647 (BOR Appeal No. 2043737)
(Claim No. 2008038917)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CITY OF WEIRTON, Respondent

MEMORANDUM DECISION

Petitioner Donald McAllister, by James Carey, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying his claim for an occupational disease of the hands. City of Weirton, by Peter Rich, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 22, 2010, in which the Board affirmed an October 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 20, 2008, Order denying compensability of the claim. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In this case, Mr. McAllister was employed as a mechanic with the City of Weirton. Mr. McAllister filed a claim for workers' compensation benefits on April 2, 2008, alleging that he had an allergic reaction to tools involved in his daily work, and as a result had developed hyperkeratosis of hand eczema. The claims administrator on May 20, 2008, rejected the claim.

The Office of Judges held that the petitioner failed to establish that he was injured in the course of and as a result of his employment, by either an occupational disease or injury. Mr. McAllister disagrees and asserts he has met all the requirements for a finding of compensability for his occupational disease.

In affirming the claims administrator's Order, the Office of Judges noted that the record demonstrated that Mr. McAllister suffered from a similar condition on his legs. It also noted a lack of diagnostic testing conclusively stating the dermatitis was caused by a reaction to nickel. The Office of Judges also mentioned that during Mr. McAllister's time off work, the condition did not show significant improvement, if any improvement at all. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of April 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review's April 22, 2010, Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh