

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DANIEL G. ELLISON, Petitioner

June 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100655 (BOR Appeal No. 2043707)
(Claim No. 2009051413)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PRINCETON COMMUNITY HOSPITAL
ASSOCIATION, INC., Respondent

MEMORANDUM DECISION

Petitioner Daniel G. Ellison, by Gregory Prudich, his attorney, appeals the decision of the Board of Review. Princeton Community Hospital, by Brandon Shumaker, 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 23, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 4, 2008, decision rejecting Mr. Ellison's application for workers' compensation benefits based on inconsistencies in the record. 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.

Mr. Ellison is currently employed as a laundry worker with Princeton Community Hospital. On January 23, 2008, he slipped on ice and fell on his right hip. He did not seek treatment for this

injury until April 18, 2008, and did not file an application for workers' compensation benefits until July 16, 2008.

In its Order, the Office of Judges held that Mr. Ellison failed to establish that he sustained a compensable injury in the course of and resulting from his employment on January 23, 2008. The Office of Judges found that Mr. Ellison failed to give immediate notice of his January 23, 2008, injury to his employer, pursuant to West Virginia Code of State Rules § 85-20-1, *et. seq.* (2006) and West Virginia Code § 23-4-1g (2003), and failed to file a claim for workers' compensation benefits until July 16, 2008. The Office of Judges further found that Mr. Ellison's statement that he attempted to continue working despite his persistent symptoms does not fit well with the remaining evidence of record, especially in light of the fact that he visited his treating physician approximately thirty times and was prescribed medications that indicate he was suffering from extreme pain. The Board of Review reached the same reasoned conclusion 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 14, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum