

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**JEANA L. HICKS, WIDOW OF THOMAS HICKS,
deceased, Petitioner**

January 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 101116 (BOR Appeal No. 2044058)
(Claim No. 2008017307)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WESTMORELAND COAL COMPANY, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 9, 2010, in which the Board affirmed a January 4, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 6, 2008, decision to deny Ms. Hicks death benefits as a result of the death of her husband, Thomas. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 its Order, the Office of Judges held that occupational pneumoconiosis was not the cause of the decedent's death. Ms. Hicks disputes this finding and asserts, per the opinions of Dr. Rasmussen and Dr. Gaziano, that occupational pneumoconiosis was the material cause of the decedent's death.

In making its decision, the Office of Judges noted that the Occupational Pneumoconiosis Board determined that the decedent's cause of death was chronic obstructive pulmonary disease due to cigarette smoking, along with multiple medical problems related to dementia. The Office of Judges also noted that significant consideration must be given to the Occupational Pneumoconiosis Board's findings, which also indicated that the decedent had only mild x-ray evidence of occupational pneumoconiosis. Additionally, the Office of Judges found that the record established that the decedent had a significant history of cigarette smoking. Specifically, the Office of Judges affirmed the findings of the Occupational Pneumoconiosis Board that the decedent had minimal x-ray evidence of occupational pneumoconiosis and that his death was caused by chronic obstructive pulmonary disease due to cigarette smoking. The Board of Review reached the same reasoned conclusion in its decision of August 9, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: January 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin

DISSENTING:

Justice Margaret L. Workman
Justice Thomas E. McHugh