

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DANNY KENNEDY, Petitioner

February 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101305 (BOR Appeal No. 2044589)**
(Claim No. 2008044793)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
APPALACHIAN POWER COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Danny Kennedy, by Anne Wandling, his attorney, appeals the decision of the Board of Review.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 27, 2010, in which the Board affirmed a May 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 18, 2009, decision denying authorization for a left carpal tunnel release. 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 Mr. Kennedy's request for a left carpal tunnel release was properly denied because carpal tunnel syndrome is not a compensable component of the claim. The Office of Judges found that the only compensable condition in the claim is bilateral hand sprain, and that the request for a carpal tunnel release is

therefore unwarranted. The Office of Judges found that although Dr. Guberman asserts that Mr. Kennedy developed carpal tunnel syndrome as a result of his employment, the claim has not been held compensable for carpal tunnel syndrome and the compensability of carpal tunnel syndrome is not at issue in the instant case. The Board of Review reached the same reasoned conclusion in its decision of September 27, 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: February 24, 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