

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

GARY A. DOTY, Petitioner

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

vs.) No. 101444 (BOR Appeal No. 2044412)
(Claim No. 2006062503)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CENTRE FOUNDRY & MACHINE COMPANY, Respondent

MEMORANDUM DECISION

Petitioner, Gary A. Doty, by Sue Anne Howard, his attorney, appeals the Board of Review order denying compensability for a left wrist injury. Centre Foundry & Machine Company, by Alyssa A. Sloan, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 12, 2010, in which the Board affirmed a March 18, 2010, order of the Workers' Compensation Office of Judges. In its order, the Office of Judges affirmed the claims administrator's denial of compensability for Mr. Doty's left wrist injury. 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, response, 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.

The Board of Review held Mr. Doty failed to present any evidence establishing the left wrist injury was received in the course of and as a result of Mr. Doty's employment. Mr. Doty asserts he never suffered a prior left wrist injury, and in the event that a prior left wrist injury occurred the injury should still be compensable since the present injury resulted in an aggravation of a pre-existing condition. Centre Foundry & Machine Company contends the instant appeal is limited to Mr. Doty's compensable injury, left wrist sprain / strain. Further, the preponderance of the evidence standard clearly establishes Mr. Doty only suffered a left wrist sprain / strain and is not entitled to compensability for a left wrist fracture.

The Office of Judges held the prior decisions in this claim establish the only compensable diagnosis is left wrist sprain/strain since a prior Order denied authorization of left wrist arthrodesis. It further held Dr. Waleed N. Mansour's report should not be found credible since he assumes a different diagnosis from that accepted under the claim. "Ultimately, while [Mr. Doty's] left wrist condition, taken as a whole, may have resulted in substantial disability as suggested by Dr. Mansour, the fact remains that the past Decisions in this case restrict consideration of whole-person impairment to that caused by [Mr. Doty's] left wrist sprain / strain." The Office of Judges, too, found no basis for granting compensability for the left wrist fracture, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 12, 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 Court affirms the Board of Review order denying compensability for the left wrist injury.

Affirmed.

ISSUED: March 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