

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JASON SPAULDING, Petitioner

vs.) **No. 101567 (BOR Appeal No. 2044563)**
(Claim No. 2010098399)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CECIL I. WALKER MACHINERY, Respondent**

MEMORANDUM DECISION

Petitioner, Jason Spaulding, by Patrick K. Maroney, appeals the Board of Review Order rejecting his claim. Cecil I. Walker Machinery, by Lisa Warner Hunter, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 9, 2010, in which the Board affirmed an April 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 4, 2008, Order, which rejected Mr. Spaulding's claim. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the parties' submissions 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 affirmed the Office of Judges' Order, which rejected Mr. Spaulding's claim for benefits. Mr. Spaulding contends that he sustained a work-related right wrist sprain. Mr. Spaulding contends that his version of the events surrounding his injury has remained relatively unchanged, which lends credence to his account of his injury. Furthermore, Mr. Spaulding states that his prior right arm injury occurred in March of 2009, several months prior to his alleged compensable injury. Further, it affected his right elbow as opposed to his wrist and healed without necessitating medical treatment.

The Office of Judges first noted that Mr. Spaulding was not at work on June 12, 2009, the date of his alleged injury. Although Mr. Spaulding later stated that June 12, 2009, was a "ballpark" figure, this is the date listed on his report of injury and medical records. Mr. Spaulding stated also

that there were witnesses to his alleged injury. There is no evidence substantiating this contention. In fact, one individual identified by Mr. Spaulding as a witness has explicitly disclaimed witnessing the alleged injury. Finally, Mr. Spaulding informed several coworkers around the time of his alleged injury that he injured his right wrist at home while operating a tiller in his garden. Accordingly, the Office of Judges found that Mr. Spaulding lacks credibility, especially considering that he did not seek medical attention until two weeks following his alleged injury. The Office of Judges affirmed the claims administrator's rejection of the claim, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 9, 2010, decision.

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

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum