

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ROBERT L. CASTLE, Petitioner

July 6, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0005 (BOR Appeal No. 2044483)
(Claim No. 2009068787)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ROCKSPRING DEVELOPMENT, INC., Respondent**

MEMORANDUM DECISION

Petitioner Robert L. Castle, by Maria Goldcamp, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying compensability of the claim for occupational hearing loss. Rockspring Development, Inc., by Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 10, 2010, in which the Board affirmed an April 19, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 15, 2009, Order denying compensability of the claim for occupational hearing loss. 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 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 this case, Mr. Castle was an electrician and coal miner for Rockspring Development, Inc. He subsequently filed a claim for occupational hearing loss. The claims administrator denied the compensability of the claim on January 15, 2009.

On appeal, Mr. Castle argues that the evidence was improperly weighed and that he has met the burden of showing he suffers from occupational hearing loss. In support of his argument, he provided the June 18, 2007, report of audiologist, Dr. Manning. In this report, Dr. Manning found that Mr. Castle suffered from high frequency nerve impairment hearing loss consistent with long-term loud noise exposure. Rockspring Development provided two reports from otolaryngologist, Dr. Wallace. In these reports, dated July 14, 2009, and November 3, 2009, Dr. Wallace noted that Mr. Castle had significant high frequency in mid range hearing loss pre-dating his employment and the isolated progression of the right ear hearing loss, along with the brevity of employment with Rockspring, made it very unlikely the hearing loss was due to occupational exposure.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of compensability, noted Dr. Wallace's extensive experience in diagnosing and treating ear-related problems including hearing loss. Dr. Manning failed to address the asymmetrical results of the audiogram. Further, the Office of Judges concluded that Dr. Wallace's reports were the most clear, concise, reliable, and persuasive evidence on the record. The Board of Review reached the same reasoned conclusion in its decision of December 10, 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 6, 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