

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**HUNTINGTON ALLOYS CORPORATION,
Petitioner**

August 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0235 (BOR Appeal No. 2044849)
(Claim No. 2009072164)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JAMES W. WOLFE, Respondent**

MEMORANDUM DECISION

Petitioner Huntington Alloys Corporation, by Steven K. Wellman, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated January 21, 2011, in which the Board affirmed a July 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's December 18, 2008, decision denying Mr. Wolfe's application for workers' compensation benefits. 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.

Mr. Wolfe is employed as a locomotive operator with Huntington Alloys Corporation, and has complained of bilateral shoulder pain that is not linked to a specific injury for several years. On December 4, 2008, Dr. Steel diagnosed Mr. Wolfe with impingement syndrome; subacromial bursitis; bilateral rotator cuff sprain, strain, and tear; and bicipital tenosynovitis. Dr. Steel has expressed his belief that Mr. Wolfe's shoulder problems are related to years of repetitive use due to his employment. On January 12, 2010, Dr. Mukkamala diagnosed Mr. Wolfe with bilateral rotator

cuff tear and bilateral rotator cuff tendinopathy. Dr. Mukkamala felt that Mr. Wolfe's shoulder problems are naturally occurring and not causally related to his employment.

In its Order reversing the claims administrator's December 18, 2008, decision, the Office of Judges held the claim compensable for bilateral rotator cuff sprain/tear/impingement syndrome as an occupational disease. Huntington Alloys Corporation disputes this finding and asserts that Mr. Wolfe's shoulder problems are not related to his employment. The Office of Judges relied on the opinion of Dr. Steel and the information contained in Mr. Wolfe's May 18, 2009, deposition in which he describes his job duties; his symptoms; and his visit with Dr. Young, his employer's physician, who recommended that he no longer perform his regular job after examining him and observing his work environment. The Board of Review reached the same reasoned conclusion in its decision of January 21, 2011.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: August 14, 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