

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 5, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RAYMOND A. SCOTT, Petitioner

vs.) **No. 11-0656** (BOR Appeal No. 2045162)
(Claim No. 2006208962)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PECHINEY ROLLED PRODUCTS, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Raymond A. Scott, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pechiney Rolled Products, LLC, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 24, 2011, in which the Board affirmed a September 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 29, 2009, decision denying the addition of aseptic necrosis of head and neck of femur as a compensable component in the 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 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. Scott was working for Pechiney Rolled Products, LLC as a crane operator when he was injured. The claim was held compensable for lumbar sprain, thoracic sprain, sprain of unspecified site of hip and thigh, and sprain of coccyx. On July 29, 2009, the claims administrator denied a request to add aseptic necrosis of head and neck of femur as a compensable component in the claim.

The Office of Judges found that the preponderance of the evidence established that aseptic necrosis of head and neck of femur was not a compensable condition of the claim. On appeal, Mr. Scott argues that two physicians have found the necrosis to be a result of the compensable injury, and it should be held compensable. Pechiney Rolled Products, LLC argues that the overwhelming evidence establishes the condition is not due to the compensable injury.

In reaching the decision to affirm the claims administrator's Order, the Office of Judges noted that Mr. Scott's treating physician, Dr. Shramowiat had previously referred to the condition as not part of the work injury, and only recently asserted that it was a result of the compensable injury. It also noted that several other physicians had repeatedly found that necrosis was not due to the compensable injury. The Office of Judges also pointed to previous Office of Judges's Orders in concluding that aseptic necrosis of head and neck of femur was not compensable. The Board of Review reached the same reasoned conclusion in its decision of March 24, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: December 5, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin