

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 24, 2013

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

GARY W. HAZELWOOD,
Claimant Below, Petitioner

vs.) **No. 11-1200** (BOR Appeal No. 2045303)
(Claim No. 2008017671)

DANIS INDUSTRIES CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Gary W. Hazelwood, by Jerome McFadden, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Danis Industries Corporation, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 21, 2011, in which the Board affirmed an October 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 17, 2007, decision rejecting the claim for workers' compensation benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Hazelwood filed an application for workers' compensation benefits in 1990 alleging that he had been exposed to the hazards of occupational pneumoconiosis. On April 10, 1995, the Office of Judges affirmed a January 14, 1991, claims administrator's decision holding the claim compensable for occupational pneumoconiosis on a non-medical basis, and also affirmed an October 29, 1991, claims administrator's decision granting no permanent partial disability award for occupational pneumoconiosis. In its 1995 decision, the Office of Judges held that Mr. Hazelwood was last employed on September 10, 1988, and was exposed to dust hazards from

limestone and concrete dust in the course of his employment. The Office of Judges further found in 1995 that on October 1, 1991, the Occupational Pneumoconiosis Board found no evidence of occupational pneumoconiosis.

In its October 27, 2010, Order affirming the December 17, 2007, claims administrator's decision, the Office of Judges held that Mr. Hazelwood's workers' compensation claim for exposure to the hazards of occupational pneumoconiosis has been previously addressed in an earlier claim, and therefore the current claim was properly rejected. Mr. Hazelwood disputes this finding and asserts that his degree of permanent impairment as a result of exposure to occupational dust hazards should be determined because he has undergone additional medical evaluations following the April 10, 1995, Office of Judges' Order.

In its Order, the Office of Judges found that the matter of Mr. Hazelwood's exposure to the hazards of occupational pneumoconiosis in the State of West Virginia through September 11, 1988, has been fully litigated, and that no permanent partial disability award resulted from the litigation. The Office of Judges further found that although Mr. Hazelwood has had no further exposure to the hazards of occupational pneumoconiosis following the litigation of his prior claim, he has filed a new claim alleging the same exposure that was the subject of the prior litigation. Therefore, the Office of Judges concluded that the issue is res judicata. The Board of Review reached the same reasoned conclusions in its decision of July 21, 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: May 24, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II