

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RONALD W. WILCOX,
Claimant Below, Petitioner

vs.) **No. 11-1303** (BOR Appeal No. 2045639)
(Claim No. 2010109310)

RALEIGH COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ronald W. Wilcox, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Raleigh County Board of Education, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 22, 2011, in which the Board affirmed a February 8, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 31, 2010, decision denying the addition of cervical intervertebral disc syndrome without myelopathy as a secondary condition of Mr. Wilcox's compensable claim. 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.

On September 30, 2009, Mr. Wilcox injured his neck and right shoulder while opening and closing a school bus door in the course of his employment as a bus driver for the Raleigh County Board of Education. Mr. Wilcox was diagnosed with a neck sprain and right shoulder sprain by his chiropractor, Dr. Sexton. The claims administrator held his claim compensable for those injuries on October 15, 2009, based on Dr. Sexton's diagnosis. Following his initial diagnosis, an MRI was done on Mr. Wilcox's cervical spine, revealing degenerative changes in the C4-5 and C5-6 levels. On November 4, 2009, Dr. Sexton requested the addition of cervical

intervertebral disc syndrome without myelopathy as a secondary condition of Mr. Wilcox's compensable condition. The claims administrator denied the request on March 31, 2010. The claims administrator's decision was affirmed by the Office of Judges on February 8, 2011, and the Board of Review on August 22, 2011, leading to this appeal.

The Office of Judges determined that the preponderance of the evidence weighed in favor of finding that Mr. Wilcox did not develop displacement of his cervical intervertebral disc without myelopathy as a result of his September 30, 2009, injury. The Office of Judges relied upon the independent medical evaluation performed by Dr. Guberman, who determined, based on the nature of the original injury, the medical history he was provided, and his own physical and neurological examination of Mr. Wilcox, that Mr. Wilcox's intervertebral abnormalities were not related to his compensable injury. The Office of Judges determined that Dr. Guberman had performed the most comprehensive and thorough evaluation of Mr. Wilcox and, therefore, found Dr. Guberman's evaluation persuasive. The Board of Review adopted the findings of the Office of Judges and affirmed its Order, on August 22, 2011.

We agree with the conclusions of the Board of Review. The preponderance of the evidence in this case, considering the report of Dr. Guberman, weighs in favor of finding that Mr. Wilcox's cervical intervertebral disc displacement does not relate to his compensable injury.

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: June 12, 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