

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**GREGORY S. LUTZ,**  
**Claimant Below, Petitioner**

**FILED**  
September 10, 2013  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

vs.) **No. 11-1624** (BOR Appeal No. 2045971)  
(Claim No. 2010108522)

**MYSTIC HILLS TRANSPORTATION, LLC,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Gregory S. Lutz, by George Zivkovich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mystic Hills Transportation, LLC, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 7, 2011, in which the Board affirmed an April 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 7, 2009, Order denying compensability. 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 2, 2009, Mr. Lutz was employed as a forklift operator and a warehouse manager by Mystic Hills Transportation, LLC, when he allegedly sustained injuries to his neck and back. On October 7, 2009, the claims administrator denied Mr. Lutz's claim finding that the disability complained of was not due to an injury received in the course of and as a result of his employment.

The Office of Judges found that the preponderance of the evidence showed that Mr. Lutz did not sustain a work related injury on September 22, 2009. Mr. Lutz appealed arguing that the evidence shows that he was injured on September 22, 2009, when damaged tires on the forklift that he was operating caused him to have a bumpy ride. Mystic Hills Transportation, LLC,

argues that the preponderance of the evidence shows that the claimant did not suffer an injury in the course of and resulting from his employment.

The records from Camden Clark Hospital show that on September 20, 2000, Mr. Lutz suffered cervical and lumbar strains due to an auto accident; on February 8, 2003, Mr. Lutz was diagnosed with acute cervical strain and thoracolumbar strain after an auto accident; and on July 23, 2003, Mr. Lutz was diagnosed with acute cervical strain and trapezius strain after a “water slide” incident. On February 8, 2011, Dr. Mukkamala examined Mr. Lutz, reviewed his medical records, and concluded that there was no reliable objective evidence that Mr. Lutz had sustained any injury on September 22, 2009.

The Office of Judges determined that Mr. Lutz did not provide sufficient collaboration to support a finding that a new fortuitous event occurred in the course of and as a result of his employment. The Office of Judges noted that the Camden Clark Hospital records contradicted Mr. Lutz’s August 13, 2010, testimony denying that he had suffered previous injuries to his neck or back. The Office of Judges found that Mr. Lutz failed to establish by a preponderance of the evidence that he had sustained an injury at work on September 22, 2009. The Board of Review agreed in its Order of November 7, 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: September 10, 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