

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 12, 2013

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

JOHN K. BAIRD,
Claimant Below, Petitioner

vs.) **No. 11-1632** (BOR Appeal No. 2045863)
(Claim No. 2008032449)

ALCAN ROLLED PRODUCTS – RAVENSWOOD, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner John K. Baird, by John Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alcan Rolled Products – Ravenswood, LLC, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 8, 2011, in which the Board affirmed a March 30, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 17, 2009, decision, which denied the application to reopen Mr. Baird's claim on a temporary total disability basis. 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 December 11, 2007, Mr. Baird was employed by Alcan Rolled Products at the Ravenswood, West Virginia facility, when he fell into a hole in the floor and injured his low back and buttocks. The claims administrator held the injury compensable for a lumbosacral strain and buttocks contusion. Mr. Baird was released to return to work without restrictions on February 9, 2009. But on March 19, 2009, Mr. Baird filed an application to reopen his claim on a temporary total disability basis which was signed by Dr. Bechtold. Dr. Bechtold diagnosed Mr. Baird with various conditions which were not compensable components of Mr. Baird's December 11, 2007, injury, including degenerative disc disease. The application requested

temporary total disability benefits for the period from August 1, 2008, through January 3, 2009, and from January 14, 2009, through June 30, 2009. The application further alleged that Mr. Baird's condition had progressed because he was not able to sit or drive for an extended period without pain. The claims administrator denied the request on April 17, 2009, stating that the medical information indicated that the request was related to a pre-existing and non-work-related condition. The Office of Judges and Board of Review affirmed the claims administrator's decision, leading to this appeal.

The Office of Judges first concluded that Mr. Baird's current symptoms derived from his pre-existing degenerative disc disease and not from the compensable injury of December 11, 2007. The Office of Judges considered the opinion of Dr. Bechtold, but it found that Dr. Bechtold's opinion did not address Mr. Baird's non-compensable degenerative changes. The Office of Judges found frequent complaints of low back pain throughout Mr. Baird's medical records as far back as December of 1999. The Office of Judges determined that Mr. Baird's current conditions were consistent with his history of degenerative back problems and more likely the result of this pre-existing condition than the result of his compensable injury. The Office of Judges secondly concluded that the evidence did not establish an aggravation or progression of Mr. Baird's compensable condition. The Office of Judges recognized that Mr. Baird had surgery related to the progression of his disc herniation, but the Office of Judges found that this condition was related to his non-work-related degenerative disc disease. The Board of Review adopted the finding of the Office of Judges and affirmed its Order.

We agree with the conclusion of the Board of Review and the findings of the Office of Judges. Mr. Baird has a history of chronic back pain resulting from degenerative disc disease. The Office of Judges relied on credible evidence in relating Mr. Baird's period of alleged temporary total disability to this non-compensable degenerative condition. Mr. Baird has not presented any evidence disclosing a progression or aggravation of his compensable condition and the claims administrator was correct to deny his application to reopen the claim on a temporary total disability basis.

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 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum