

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JASON R. EARLEY, Petitioner

June 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-0007 (BOR Appeal No. 2044700)**
(Claim No. 2008030587)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
ALCAN ROLLED PRODUCTS - RAVENSWOOD,
Respondent**

MEMORANDUM DECISION

Petitioner, Jason R. Earley, by Edwin H. Pancake, his attorney, appeals the Board of Review order which denied compensability. Alcan Rolled Products-Ravenswood (hereinafter "Alcan"), by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 7, 2010, in which the Board affirmed a May 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability for Mr. Earley's spine injury. The appeal was timely filed by the petitioner and a response was filed by Alcan Rolled Products - Ravenswood. 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, response, 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.

The Board of Review held Mr. Earley did not suffer a work-related spine injury and denied Mr. Earley's request for compensability. Mr. Earley asserts he suffered a work-related spine injury while lifting a tool box in the course of his employment on January 31, 2008. On that date, Mr. Earley sought an excuse to home from the plant physician, Dr. Witt, for "industrial stress." During

the visit, related to the industrial stress claim, Mr. Earley did not mention that he suffered a spine injury. Dr. Witt also opined Mr. Witt did not appear to be suffering from a spine injury, Mr. Earley walked normally and did not present with any indications of pain. Only after returning home did Mr. Earley call back to the plant clinic and state that he suffered a spine injury. Mr. Early refused to return to the plant the next day for further evaluation and only received an evaluation on February 14, 2008, after returning to work. Dr. Witt's evaluation found no spasm of the thoracic or lumbar spine, full range of motion, no lower extremity motor or sensory deficits, and a healing scratch on Mr. Earley's back, which Mr. Earley asserted he received at home.

The Office of Judges held Mr. Earley's allegation that he suffered a spine injury on January 31, 2008, is not persuasive and denied the request for compensability. During an examination on the alleged date of injury Mr. Earley did not complain of a back injury, rather Mr. Earley only complained of industrial stress. The Office of Judges, too, found no basis for granting Mr. Earley compensability, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of December 7, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear statutory provision nor is the decision based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review Order.

Affirmed.

ISSUED: June 29, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum