

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

PAUL E. STOVER, Petitioner

vs.) No. 11-0097 (BOR Appeal No. 20447011)
(Claim No. 2002030801)

FILED

December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BAR-K, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 16, 2010, in which the Board affirmed a May 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 6, 2008, Order, which denied Mr. Stover's reopening request as untimely. The appeal was timely filed by the petitioner, and the West Virginia Office of Insurance Commissioner filed a response. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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 affirmed the Office of Judge's Order, which denied Mr. Stover's request to reopen his claim on a permanent partial disability benefit basis. Mr. Stover acknowledges that West Virginia Code § 23-4-16 requires that reopening requests be filed no more than five years following the date of an initial permanent partial disability award. But, he argues that this time period should begin to run on July 25, 2005, the date on which his bladder incontinence was held compensable, as opposed to April 25, 2003, the date on which he received his first permanent partial disability award.

The Office of Judges cited West Virginia Code § 23-4-16(a)(2), which states that reopening requests must be filed within five years of the date of the initial award in any claim in which an award of permanent impairment has been made. (May 26, 2010, Office of Judges Order, p. 4.) Mr. Stover was first granted a permanent partial disability award on April 25, 2003, which gave him until April 25, 2008, to file a reopening request. *Id.* The subject reopening request was not filed until February 18, 2009 - nearly ten months following this deadline. *Id.* As the request fell outside of the five years period in which he could file a reopening request, the Office of Judges denied the request as untimely. *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its December 16, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of Mr. Stover's reopening request is affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum