

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JEFFERY R. MURRAY, Petitioner

vs.) **No. 11-0471** (BOR Appeal No. 2044986)
(Claim No. 2009057894)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
STAR PLASTICS, INC., Respondent**

MEMORANDUM DECISION

Petitioner Jeffery R. Murray, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Star Plastics, Inc., by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 18, 2011, in which the Board affirmed an August 6, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 10, 2008, decision denying Mr. Murray's request for workers' compensation benefits. 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 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.

Mr. Murray was employed with Star Plastics, Inc. as a general laborer. He alleges that he sustained a left shoulder injury while shoveling bits of plastic on July 28, 2008. The record indicates that Mr. Murray has a history of left shoulder dislocations beginning when he was sixteen years old. Following a 2007 work-related shoulder dislocation, Mr. Murray's treating physician noted continued instability in his left shoulder. On July 28, 2008, Mr. Murray was seen by his primary care physician who noted that he was suffering from left shoulder pain, clicking, and bruising, but did not indicate that an injury had occurred.

In its Order affirming the September 10, 2008, claims administrator's decision, the Office of Judges held that the preponderance of the evidence does not show that Mr. Murray sustained a left shoulder injury in the course of and resulting from his employment on July 28, 2008. Mr. Murray disputes this finding and asserts that the evidence of record clearly demonstrates that he sustained a work-related injury on July 28, 2008.

The Office of Judges noted that Mr. Murray has a history of recurrent left shoulder dislocations and injuries. The Office of Judges further noted that Mr. Murray's primary care physician's July 28, 2008, treatment notes failed to document an injury. The Office of Judges then found that a definite, isolated, fortuitous event associated with an injury did not occur. As noted by the Office of Judges, the record indicates that Mr. Murray merely alleged that he developed pain in an area of his body with a significant history of prior injuries while performing his customary work duties. The Board of Review reached the same reasoned conclusion in its decision of February 18, 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: December 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh