

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 22, 2013

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

DAVID T. MOUNTS,
Claimant Below, Petitioner

vs.) **No. 11-1180** (BOR Appeal No. 2045655)
(Claim No. 2010129495)

PRESTON MEMORIAL HOSPITAL CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner David T. Mounts, by Patrick Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Preston Memorial Hospital Corporation, by Gary Nickerson and James Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 19, 2011, in which the Board affirmed a February 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 13, 2010, decision rejecting Mr. Mounts's application for workers' compensation benefits. 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.

Mr. Mounts was working for Preston Memorial Hospital when he alleged that he injured his neck and lower back while at work on March 27, 2010. The claims administrator denied the application for workers' compensation benefits on April 13, 2010, because an occupational injury did not occur.

The Office of Judges affirmed the claims administrator's decision, and held that the preponderance of the evidence did not establish that a personal injury was received in the course

of and as a result of Mr. Mounts's employment. Mr. Mounts disagrees and asserts that the March 27, 2010, incident resulted in an occupational injury, and was not a progression of a prior injury or a preexisting condition. Preston Memorial Hospital maintains that the record demonstrates several inconsistencies and great confusion regarding the alleged injury, and that the medical evidence shows no occupational injury occurred on March 27, 2010.

The Office of Judges found that the preponderance of the evidence indicates that Mr. Mounts has had chronic problems with his neck and lower back. It noted that the day before the alleged injury, Mr. Mounts visited Dr. Ranson to follow up regarding his low back and right radicular complaints. It further noted that the evidence reveals a diagnosis of degenerative disc disease dating back several years. The Office of Judges noted several inconsistencies in Mr. Mounts's testimony regarding his condition. Thus, the Office of Judges concluded that the evidence demonstrates that the current complaints are related to naturally occurring degenerative changes. The Board of Review reached the same reasoned conclusions in its decision of July 19, 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: May 22, 2013

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman