

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 22, 2013

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

JON G. ADKINS,
Claimant Below, Petitioner

vs.) **No. 11-1192** (BOR Appeal No. 2045722)
(Claim No. 2010136254)

MOUNTAIN EDGE MINING, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jon G. Adkins, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mountain Edge Mining, Inc., by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 21, 2011, in which the Board affirmed a March 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 18, 2010, decision rejecting Mr. Adkins'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. Adkins was working for Mountain Edge Mining when he allegedly suffered an occupational injury to his thoracic spine. He sought treatment at St. Mary's Medical Center on April 15, 2010, for thoracic pain. The claims administrator rejected the application for workers' compensation benefits on May 18, 2010.

The Office of Judges affirmed the claims administrator's decision, and held that Mr. Adkins did not sustain an injury in the course of and resulting from his employment with

Mountain Edge Mining. Mr. Adkins disagrees and asserts that the evidence establishes that his injury was related to his employment and that he is entitled to workers' compensation benefits. Mountain Edge Mining maintains that the preponderance of the evidence does not establish that an occupational injury occurred.

In affirming the claims administrator's decision, the Office of Judges noted that there were several inconsistencies in the record concerning the alleged work-related incident. It noted that Mr. Adkins was unclear as to the date of injury, and what job he was performing when he alleged he was injured. The Office of Judges pointed out that Mr. Adkins's history includes a thoracic fracture that has been symptomatic various times since his childhood. It further noted that the record lacked evidence relating the symptoms with the date of the alleged injury. Thus, the Office of Judges concluded that Mr. Adkins had not been injured in the course of and as a result of his employment. The Board of Review reached the same reasoned conclusions in its decision of July 21, 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 Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II