

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**DANIEL L. ROLSTON,
Claimant Below, Petitioner**

FILED
October 24, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-1391 (BOR Appeal No. 2045716)
(Claim No. 2009089019)

**ALCAN ROLLED PRODUCTS – RAVENSWOOD, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Daniel L. Rolston, by John Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alcan Rolled Products – Ravenswood, LLC, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 16, 2011, in which the Board affirmed a February 24, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 26, 2009, decision rejecting Mr. Rolston's claim. 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. Rolston had been employed as a welder for Alcan Rolled Products at the Ravenswood, West Virginia plant for over twenty years when, on March 25, 2009, he filed a claim for a workers' compensation benefits. Mr. Rolston alleged in his application that he had incurred an injury to his neck, right shoulder, right arm, and right hand by repeatedly, throughout the course of his career, snapping his head down in order to flip the welding hood of his helmet down over his face. Mr. Rolston's application was supported by the report of Dr. Folwell, who evaluated Mr. Rolston on March 9, 2009. Dr. Folwell diagnosed Mr. Rolston with cervicgia, brachial neuritis or radiculitis NOS, and displacement of cervical intervertebral disc with

myelopathy. The claims administrator denied Mr. Rolston's application for benefits on May 26, 2009, stating that his symptoms were related to pre-existing degenerative conditions unrelated to his employment and an aggravation of a prior injury. The Office of Judges and the Board of Review affirmed the claims administrator's decision on February 24, 2011, and September 16, 2011, respectively, leading to this appeal.

The Office of Judges concluded that Mr. Rolston's condition was caused by cervical problems which were not related to his repetitive motion at work. The Office of Judges determined that Mr. Rolston's cervical pain was attributable to a history of neck problems, including chronic non-compensable degenerative issues and a previous cervical related neck injury for which he had received anterior microforaminotomy surgery on May 27, 2002. The Board of Review adopted the finding of the Office of Judges and affirmed its Order.

We agree with the conclusion of the Board of Review. The Office of Judges determined, based on a preponderance of the evidence, that Mr. Rolston did not receive a personal injury in the course of his employment under West Virginia Code § 23-4-1(a) (2008). The Office of Judges found that Mr. Rolston had a history of neck problems related to a prior injury and non-compensable degenerative conditions. The Office of Judges' finding is supported by the record taken as a whole.

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: October 24, 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