

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**PERFORMANCE COAL COMPANY,
Employer Below, Petitioner**

FILED
July 19, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-1457** (BOR Appeal No. 2045774)
(Claim No. 2010135147)

**CHARLES WILLIAMS,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner Performance Coal Company, by Sean Harter, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Charles Williams, by Edwin H. Pancake, his attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 26, 2011, in which the Board reversed a March 7, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 9, 2010, order. 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.

On April 5, 2010, Mr. Williams was employed by Performance Coal Company as an underground coal miner. Mr. Williams was approximately 5000 feet underground at the time of the massive Upper Big Branch mine explosion. Mr. Williams and his group were enveloped by air, dust, gas and debris from the explosion. Mr. Williams allegedly sustained injuries to his lungs and ears, chronic headaches, anxiety and depression due to the explosion.

On April 23, 2010, Mr. Williams was diagnosed with sinus congestion, headache and a toxic effect of hydrocarbon gas. On May 11, 2010, Dr. Al Mousattat diagnosed Mr. Williams with headaches and panic attacks on a workers' compensation claim application. On July 21,

2010, notes from Raleigh Boone Medical indicate that Mr. Williams was seen for headaches and hearing difficulties.

The Office of Judges determined that the preponderance of the evidence did not establish that Mr. Williams had suffered a physical injury in the course of and as a result of his employment on April 5, 2010, and therefore, his claims of acute stress disorder and anxiety associated with the Upper Big Branch mine explosion is strictly mental-mental and non-compensable under West Virginia Code § 23-4-1f (2006).

The Board of Review found that Mr. Williams suffered a physical injury by physical means on April 5, 2010, when he was hit by a rush of air, dust and debris following the massive mine explosion. The Board of Review noted that Mr. Williams suffered the following physical symptoms: problems with his ears, sinus congestion, and headaches. The Board of Review concluded that Mr. Williams's physical and psychiatric injuries were in the course of and resulting from his employment and ruled that he met the requirements of West Virginia Code § 23-4-1; therefore, his claim is compensable. 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: July 19, 2013

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

Chief Justice Brent D. Benjamin, Disqualified