

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ANTHONY R. GIBSON JR,
Claimant Below, Petitioner

FILED
September 10, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-1623** (BOR Appeal No. 2045924)
(Claim No. 2011004362)

BRODY MINING LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Anthony R. Gibson Jr., by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Brody Mining, LLC, by Matthew L. Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 3, 2011, in which the Board affirmed an April 25, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 2, 2010, Order rejecting the 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.

On July 21, 2010, Mr. Gibson was working as a foreman/fire boss for Brody Mining, LLC when he filed a claim seeking workers' compensation benefits for bilateral carpal tunnel syndrome. On September 2, 2010, the claims administrator rejected the claim because the medical evidence failed to show that the carpal tunnel syndrome was due to an injury or disease received in the course of and as a result of Mr. Gibson's employment. On August 2, 2010, Dr. Muscari signed the application for benefits and stated the condition as occupational bilateral carpal tunnel syndrome.

The Office of Judges found that the preponderance of the evidence did not support holding the claim compensable. Mr. Gibson appealed arguing that the preponderance of the

evidence shows that his condition arose directly from his employment. Mr. Gibson stated on his application for benefits that his bilateral carpal tunnel syndrome came from repetitive writings, repetitive steering of a man trip, and taking repetitive air readings. Brody Mining, LLC argues that Mr. Gibson's self-reported duties do not include any of the constant, repetitive, or vibratory hand activities associated with the development of carpal tunnel syndrome. On August 30, 2010, Dr. Rebecca Thaxton performed a physician's review, and considered the fact that Mr. Gibson was a right handed foreman/fire boss who said his duties were driving a mantrip, constant use of his hands in taking air measurements, and writing. Dr. Thaxton noted that Mr. Gibson was not a worker in a high risk category for developing carpal tunnel syndrome, and recommended rejecting the claim.

The Office of Judges found that the description of Mr. Gibson's job duties did not give rise to a reasonable inference that his occupation is responsible for his carpal tunnel syndrome. The Office of Judges noted that Mr. Gibson is employed in a supervisory position that did not require constant driving, writing, or repetitive movements. The Board of Review reached the same reasoned conclusions in its Order of November 3, 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: September 10, 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