

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

RANDY B. CECIL,
Claimant Below, Petitioner

vs.) **No. 12-0762** (BOR Appeal No. 2046697)
(Claim No. 2010118259)

**WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES,**
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Randy B. Cecil, by Gregory S. Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Department of Health and Human Resources, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 31, 2012, in which the Board affirmed a December 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 31, 2009, decision 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.

Mr. Cecil alleges he was injured on September 25, 2009, when his co-worker, Ms. Cook, ran into a ditch. Mr. Cecil testified in a deposition that he reported the work-related accident to his nurse practitioner, Jessica Hall. Ms. Hall testified however, that he told her he was in a motor vehicle accident in the past. During the examination Ms. Hall determined that an x-ray showed Mr. Cecil suffered from bilateral neural foraminal encroachment. She concluded that this was likely the cause of his symptoms. She testified in her deposition that the condition was the result of pre-existing degenerative changes, not an acute injury.

Mr. Cecil testified in his deposition that he reported the motor vehicle accident the day it happened to his supervisor, Mr. Wood. Mr. Wood testified that he did not recall Mr. Cecil ever reporting a work-related accident to him. Mr. Long and Mr. McGuire, two other supervisors, also testified in their depositions that Mr. Cecil failed to report a work-related accident to them. Mr. McGuire also reported that Mr. Cecil did not fill out an accident report until December of 2009. Ms. Davis, an assistant prosecutor who sometimes worked with the Department of Health and Human Resources, testified in her deposition that she recalled that Mr. Cecil told her he reported the accident to his supervisor.

The employer questioned the injury, because it was unaware that an injury occurred until after Mr. Cecil resigned. The record seems to indicate that Mr. Cecil quit his job by simply failing to show up. After he missed two consecutive days at the beginning of November, Ms. Walker, from human resources, called him. In an e-mail, Ms. Walker said that when she reached Mr. Cecil he informed her that he quit, because the job was not right for him and involved too much travel. Mr. Cecil testified that he called in on the first day that he missed. Ms. Walker called him back the next day and informed him that he had to come to work or be fired.

Mr. Cecil testified in his deposition that he was in two separate motor vehicle accidents with Ms. Cook while she was driving. He alleged that the first accident occurred when she struck a pole at a fast food restaurant. Mr. Cecil testified that he was sore after the accident. Ms. Cook testified in her deposition that she merely scraped the side of her motor vehicle and did not consider that to be an accident. Mr. Cecil alleges the second accident happened when he and Ms. Cook were going to a client's home, and she ran into a ditch. He testified that he was certain which client they were visiting that day. However, the evidence indicates that Mr. Cecil and Ms. Cook did not work together on the day in question. Mr. McGuire reviewed the records from the date of the alleged injury. He found that Ms. Cook was in court for part of the day, and then did a home visit with another co-worker. Mr. Long testified that he reviewed the records and found that Ms. Cook and Mr. Cecil only went on home visits together on September 1, October 16, and October 23, 2009. Ms. Short, a co-worker, testified that she and Ms. Cook went to an elementary school on the day in question. She said that the trip had nothing to do with the client Mr. Cecil alleges he and Ms. Cook were visiting that day. Ms. Cook also testified that she and Mr. Cecil did not work together on the day of the alleged injury. She stated that they would have gone to see that particular client around the end of October of 2009.

Ms. Davis testified in her deposition that Mr. Cecil told her about the two motor vehicle accidents. She asserted that she saw the damage on Ms. Cook's vehicle after both of the accidents. Mr. Cecil reported that Ms. Davis was in the office when he and Ms. Cook returned to work on the day of the accident. He said that Ms. Cook told Ms. Davis about the accident.

Ms. Cook admitted in her deposition that she was in a motor vehicle accident in the course of her employment before Mr. Cecil was hired. Mr. McGuire testified that Ms. Cook ran into a parked motor vehicle. She was not disciplined, because it was determined that the accident was not her fault. He also said that to the best of his knowledge, no one in the agency had ever been disciplined for automobile accidents. Mr. Wood also testified that he was only aware of one motor vehicle accident that Ms. Cook was involved in.

The claims administrator denied the claim on December 31, 2009. The Office of Judges affirmed the decision of the claims administrator on December 9, 2011. The Office of Judges found that Mr. Cecil was not clear whether both of the automobile incidents occurred on September 25, 2009, or if only one accident occurred that day. The Office of Judges noted that he failed to file a workers' compensation claim until December of 2009. It also determined that Mr. Cecil failed to mention a work-related accident to Ms. Hall when he sought treatment. The indication was that he hurt his shoulder and back in a motor vehicle accident a long time ago. The Office of Judges also determined that Ms. Hall testified in a deposition that Mr. Cecil's problems were degenerative in nature. The Office of Judges therefore concluded that there was no medical evidence on the record to support Mr. Cecil's allegation that he was injured in the course of his employment.

The Office of Judges found that Mr. Cecil asserted Ms. Cook had a history of automobile accidents. However, the Office of Judges determined that Mr. Cecil was only aware of one motor vehicle accident Ms. Cook had before he joined the agency. She was not cited for the accident. The other two accidents he alleges happened were ones that he was supposedly involved in. He testified in a deposition that the first accident happened at a fast food restaurant when Ms. Cook ran into a pole in the drive through. He admitted that she told him she used paint remover to remove the paint from the driver's side of her vehicle. The Office of Judges found that this accident was so minor that Mr. Cecil could not have sustained injuries from it. Therefore, the Office of Judges held that his assertion that he was sore after the accident was not credible.

The second accident allegedly occurred on September 25, 2009. Mr. Cecil was very specific regarding the client he and Ms. Cook were going to see when the accident happened. The Office of Judges found that the office records do not indicate that Mr. Cecil was with Ms. Cook on the day in question. Mr. Cecil was not recorded as visiting the client he alleges they were going to meet. Mr. Long went through not only the log-in sheets but also the case files and was unable to find any evidence to support Mr. Cecil's allegation. The Office of Judges found Ms. Short's testimony to be particularly enlightening in this matter. She was clear that where Mr. Cecil went that day had nothing to do with the particular case he alleges he and Ms. Cook were working on. The Office of Judges concluded that there was very little evidence to support the allegation that Ms. Cook had a history of motor vehicle accidents.

The Office of Judges found it particularly enlightening that Mr. Cecil resigned from his position before he filed a workers' compensation claim. His resignation took place in an unusual manner. The Office of Judges determined that the evidence shows that Mr. Cecil simply failed to show up at work on the second and third of November of 2009. Ms. Walker testified he told her that he was not going to return to work, because he did not like the job.

The Office of Judges found the testimony of Ms. Davis to be unpersuasive. She testified that he informed her that he was having pain in his shoulder and neck following a motor vehicle accident in which Ms. Cook ran off the road. The Office of Judges found it interesting that Ms. Davis asserted Mr. Cecil told her he was sore after the accident at the fast food restaurant. The

Office of Judges concluded that just because Ms. Davis was informed of an accident did not mean that it happened. She was not present when either of the accidents supposedly occurred.

The Office of Judges ultimately concluded that the evidentiary record demonstrated that Mr. Cecil was not in a work-related motor vehicle accident as he alleges. The medical evidence does not support his allegation. He failed to file a workers' compensation report until well after the accident supposedly occurred. The Office of Judges also noted that it was extremely important that Mr. Cecil resigned from his job after simply failing to show up for two days. The Office of Judges decided that this made his workers' compensation claim suspicious especially given that he did not report work-related injuries to his doctor or anyone at his place of employment until well after he had resigned.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its May 31, 2012, decision. The Board of Review was correct in its reasoning and conclusions. The evidence of record clearly indicates that Mr. Cecil was not injured in a motor vehicle accident in the course of his employment.

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: January 14, 2014

CONCURRED IN BY:

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

Justice Brent D. Benjamin, Not Participating