

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 22, 2013

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

DARRELL L. HALL,
Claimant Below, Petitioner

vs.) **No. 12-0314** (BOR Appeal No. 2046477)
(Claim No. 2011028728)

RADFORD & RADFORD, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Darrell L. Hall, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Radford & Radford, Inc., by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 15, 2012, in which the Board affirmed a September 27, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 24, 2011, decision rejecting Mr. Hall's claim 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. Hall alleges that he sustained a work-related injury on February 18, 2011. He submitted a Report of Injury dated February 18, 2011, in which he stated that he injured his back and legs when he accidentally tripped. On February 19, 2011, Dr. McCleary diagnosed Mr. Hall with lumbar and lumbosacral sprains/strains, and stated that Mr. Hall reported to him that he fell on a scaffold on February 18, 2011. He later noted that a lumbar spine MRI revealed a small disc protrusion at L4-5. The employer's Report of Injury dated March 3, 2011, states that Mr. Hall was injured while carrying concrete blocks and indicates that the employer questions the injury.

On March 4, 2011, Chiropractor Hill stated that Mr. Hall reported injuring his back on February 18, 2011, when he fell off a scaffold. Mr. Hall stated in a May 25, 2011, deposition that he was injured when he slipped on the bottom of a scaffold while holding a concrete block. On June 7, 2011, several of Mr. Hall's coworkers, including his supervisor, signed affidavits stating that although Mr. Hall mentioned experiencing back pain on February 18, 2011, he never indicated that he sustained any type of injury. On March 24, 2011, the claims administrator rejected the claim based on a finding that Mr. Hall did not sustain an injury in the course of and resulting from his employment.

In its Order affirming the March 24, 2011, claims administrator's decision, the Office of Judges held that Mr. Hall is not entitled to workers' compensation benefits in connection with the February 18, 2011, incident. Mr. Hall disputes this finding and asserts that the evidence of record demonstrates that he sustained an injury in the course of and resulting from his employment.

The Office of Judges found that the evidence of record demonstrates that Mr. Hall did not sustain an injury in the course of and resulting from his employment. The Office of Judges noted that Mr. Hall's coworkers were unaware that he sustained an alleged injury. Further, the Office of Judges found that Mr. Hall made multiple inconsistent statements with regard to the alleged injury. The Board of Review reached the same reasoned conclusions in its decision of February 15, 2012. 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: November 22, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum