

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**NORMAN A. BROWN, II,**  
**Claimant Below, Petitioner**

**vs.) No. 100755 (BOR Appeal No. 2043842)**  
**(Claim No. 2009067187)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER,**  
**Commissioner Below, Respondent**

**and**

**MICKY'S WELDING, LLC,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated May 25, 2010, in which the Board affirmed a November 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's rejection of Mr. Brown's claim on November 14, 2008. The appeal was timely filed by the petitioner, and Micky's Welding, LLC filed a response. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review affirmed the rejection of Mr. Brown's claim. Mr. Brown argues that the evidence was improperly weighed in that insufficient credit was given to his affidavit

**FILED**

**July 19, 2011**

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

setting forth that he sustained a work-related injury to his right shoulder on July 22, 2008 and the undated affidavit of a coworker asserting the same. The Office of Judges, however, found that Mr. Brown had complained of right shoulder pain on July 15, 2008 and requested to see his doctor on that same date. (Nov. 30, 2009 Office of Judges Order, p. 6.) On July 22, 2008, Mr. Brown obtained an x-ray of his shoulder, but he did not complain of an injury. *Id.* In fact, Mr. Brown did not allege a work-related injury until November 12, 2008. *Id.* The Office of Judges concluded that “there are sufficient contradictions not only from the evidence introduced by the employer but also by the claimant to rebut the case for finding that a compensable injury occurred.” *Id.* at p. 7. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of May 25, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board’s material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the rejection of his claim is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh