

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RONALD E. ROBINSON,
Claimant Below, Petitioner

vs.) No. 100776 (BOR Appeal No. 2043813)
(Claim No. 2008042407)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

SIMONTON BUILDING PRODUCTS, INC.,
Employer Below, Respondent

FILED
July 19, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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 12, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of the petitioner's claim for benefits following his diagnosis of renal cancer. The appeal was timely filed by the petitioner, and the Insurance Commissioner 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 denial of Mr. Robinson's claim for benefits related to renal cancer. Mr. Robinson asserts that he was exposed to various chemicals during his

employment with Simonton Building Products, Inc., which precipitated his development of renal cancer. Mr. Robinson also points to Dr. Alan Ducatman's opinion that, to a reasonable degree of medical certainty, Mr. Robinson suffers from an occupational disease.

The Office of Judges, however, noted first that kidney cancer is an ordinary disease of life. (Nov. 12, 2009 Office of Judges Order, p. 5.) For an ordinary disease of life to be found compensable, the six factors outlined in West Virginia Code § 23-4-1(f) must be met. *Id.* at p. 3. The Office of Judges found that Mr. Robinson has not met all six factors. *Id.* at p. 4-5. First, Mr. Robinson failed to show a direct causal connection between his work conditions and the occupational disease. *Id.* at p. 5. Although Dr. Ducatman opined that the industrial chemicals may have increased Mr. Robinson's risk of kidney cancer, he also stated that, "[f]at out, [smoking is] his biggest risk factor." *Id.* at p. 2. Mr. Robinson had a significant smoking history, is obese, and has hypertension and diabetes. *Id.* at p. 5. All of these nonoccupational risk factors have a greater connection to kidney cancer.

Furthermore, kidney cancer has not been shown to have followed as a natural incident of Mr. Robinson's work exposure nor is it fairly traced to employment as the proximate cause. *Id.* Finally, Mr. Robinson's kidney cancer has not had its origin and risk connected with his employment nor does it flow from that source as a natural consequence. *Id.* The Board of Review reached the same reasoned conclusion 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 denial of Mr. Robinson's claim for benefits related to renal cancer is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum