

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 8, 2013

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

**ROBERT W. WRISTON,
Claimant Below, Petitioner**

vs.) **No. 11-1055** (BOR Appeal No. 2010111476)
(Claim No. 2045445)

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

and

**NEW RIVER COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Robert W. Wriston, by Robert M. Williams, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jon H. Synder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 17, 2011, in which the Board affirmed a December 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 19, 2009, decision that denied the claim for occupational pneumoconiosis 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. Wriston worked for New River Company. On November 19, 2009, the claims administrator denied the claim for occupational pneumoconiosis benefits because New River Company's report indicated that Mr. Wriston was employed in Michigan as a machinist for Cap Collet & Tool, Inc. from 1986 to October 27, 2008.

The Office of Judges affirmed the claims administrator's decision because the record does not establish by a preponderance of the evidence that Mr. Wriston was last exposed to the hazards of dust in West Virginia. On appeal, Mr. Wriston disagrees and asserts that he was pro se when answering the interrogatories and cannot be expected to have fully understood the interrogatories. Mr. Wriston also argues that the record amply demonstrates that he was last exposed to occupational dust while employed in the coal mining industry in West Virginia in 1985. The West Virginia Office of Insurance Commissioner maintains that the Board of Review correctly applied the law to the facts and that Mr. Wriston failed to meet the burden of proof.

West Virginia Code § 23-4-1 (2008) requires that the claimant demonstrate that he was exposed to the hazards of dust in the State of West Virginia for a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards or for any five of fifteen years immediately preceding the date of his last exposure, in order to be held compensable. The Office of Judges stated that Mr. Wriston failed to specifically state that he was exposed to the hazards of dust in the course of or resulting from his employment in the coal mining industry, although one might reasonably infer that such was the case. The Office of Judges noted that Mr. Wriston focused on proving that he worked for New River Company in West Virginia for approximately fifteen years, which is not an issue, instead of proving that the exposure is not a result of his employment in Michigan. The Office of Judges stated that Mr. Wriston failed to provide a description of his work environment for Cap Collet & Tool, Inc. as a machinist and has only indirectly denied the exposure to dust as a result of his employment in Michigan. Thus, it concluded that the application for workers' compensation benefits was properly denied. The Board of Review reached the same reasoned conclusions in its decision of June 17, 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: May 8, 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