

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 28, 2014

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

ANDREW J. SEDLOCK IV,¹
Claimant Below, Petitioner

vs.) No. 12-1352 (BOR Appeal No. 2047252)
(Claim No. 2011021156)

EIN MANAGEMENT, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Andrew J. Sedlock IV, by J. Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. EIN Management, LLC, by Gary Nickerson and James Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated October 24, 2012, in which the Board affirmed a May 16, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 29, 2010, decision rejecting Mr. Sedlock'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. Sedlock alleges that he injured his back in the course of his employment when he slipped while loading supplies into the back of a truck and landed on a trailer hitch on December 6, 2010. Mr. Sedlock was evaluated at Plateau Medical Center on the day of the alleged incident.

¹ It is noted that the Board of Review, Office of Judges, and claims administrator consistently refer to the petitioner as "Andrew J. Sedlock III". However, Mr. Sedlock testified before the Office of Judges on January 5, 2012, that he is, in actuality, "Andrew J. Sedlock IV". Therefore, to facilitate the correct identification of the petitioner in the instant appeal, this Court will refer to the petitioner by his proper name, "Andrew J. Sedlock IV".

It was noted that he had a history of back pain, and he was diagnosed with a contusion and chronic back pain. However, in a January 5, 2012, hearing before the Office of Judges, Mr. Sedlock testified that he did not have a history of back pain prior to the date of the alleged injury. The claims administrator rejected the claim based on a finding that Mr. Sedlock did not sustain an injury or illness in the course of or resulting from his employment. In its Order affirming the claims administrator's decision, the Office of Judges held that Mr. Sedlock did not sustain a work-related injury on December 6, 2012.

The Office of Judges found that Mr. Sedlock's medical records clearly show that he has a history of back pain dating to 2005. The Office of Judges further found that in the week preceding the date of the alleged injury, Mr. Sedlock presented himself twice for treatment of back pain three years in duration. The Office of Judges concluded that Mr. Sedlock's medical records directly contradict his January 5, 2012, testimony and adversely affects his credibility. Therefore, the Office of Judges determined that a preponderance of the evidence does not support a finding of compensability in the instant claim. The Board of Review reached the same reasoned conclusions in its decision of October 24, 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: March 28, 2014

CONCURRED IN BY:

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