

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

IMPERIAL BUILDERS OF WV, Petitioner

December 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101304 (BOR Appeal No. 2044324)
(Claim No. 2010104653)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JOSEPH B. ALLEN, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 9, 2010, in which the Board reversed a March 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 1, 2009, decision that Mr. Allen did not sustain a compensable injury. The appeal was timely filed by the petitioner. 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, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition 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.

In its Order reversing the March 24, 2010, Office of Judges Order, the Board of Review held that Mr. Allen did sustain a compensable injury pursuant to W. Va. Code § 23-4-1. Mr. Allen's employer, Imperial Builders of WV, disputes this finding and asserts that Mr. Allen did not sustain a specific neck injury in the course of his employment, and that he did have a prior neck injury sustained in a motor vehicle accident several years earlier.

The Board of Review found that Mr. Allen sustained a muscle spasm in the area of his cervical spine on April 15, 2001, in a car accident, and that the record indicated that no treatment for this injury occurred after April 17, 2001. The Board of Review also found that Mr. Allen was repairing Sheetrock on a ceiling on July 7, 2009, and that after several hours his neck felt stiff; over the next few days his symptoms intensified even with rest. The Board of Review noted that following Mr. Allen's injury, he sought treatment with Dr. Collier, who found that his current condition was the result of an occupational injury and diagnosed him with cervical and thoracic sprain, and cervicobrachial syndrome.

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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: December 14, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh