

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 31, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DONALD E. ALLEN, Petitioner

vs.) **No. 11-0448** (BOR Appeal No. 2045022)
(Claim No. 990065387)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
U.S. STEEL MINING COMPANY, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Donald E. Allen, by Maria Goldcamp¹, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. U.S. Steel Mining Company, by Barney Frazier, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 18, 2011, in which the Board affirmed an August 31, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 17, 2007, decision denying Mr. Allen's request to add osteoarthritis as a compensable component of the claim. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Mr. Allen injured his back while carrying a bag of rock dust on April 14, 1999, and the claim was held compensable for lumbosacral strain. While undergoing treatment for this injury, Mr. Allen was informed that he had severe osteoarthritis and osteoarthritis in his left hip, and underwent a total hip replacement. He was treated for osteoarthritis and osteoarthritis by Drs. Shamblin and Sale, and Dr. Landis reviewed his medical record.

¹ On July 7, 2011, Ms. Goldcamp's attorney-client relationship with Mr. Allen was terminated.

In its Order affirming the February 17, 2007, claims administrator's decision, the Office of Judges held that Mr. Allen failed to show that there is a causal relationship between the compensable lumbosacral sprain and osteoarthritis of his left hip. The Office of Judges found that Drs. Shamblin, Sale, and Landis all stated that Mr. Allen's back injury did not cause the severe arthritis in his left hip, which was present at the time of the injury, although the injury may have made the arthritis more symptomatic. The Office of Judges further found that the injury to Mr. Allen's lumbar spine did not cause his arthritis to progress in any significant way. Both Dr. Sale and Dr. Landis stated that Mr. Allen's hip replacement was necessitated by degenerative arthritis and was not a result of the injury to his lumbosacral spine. Further, Dr. Landis stated in his report that there was no indication that degenerative arthrosis should be added as a compensable component. The Board of Review reached the same reasoned conclusion in its decision of February 18, 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: October 31, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh