

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RANDY TORRIS,
Claimant Below, Petitioner

FILED
October 4, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0009** (BOR Appeal No. 2046178)
(Claim No. 2010105245)

ALCAN ROLLED PRODUCTS-RAVENSWOOD, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Randy Torris, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alcan Rolled Products-Ravenswood, LLC, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 13, 2011, in which the Board affirmed a June 27, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 22, 2009, decision denying 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. Torris allegedly suffered exposure to the hazards of occupational pneumoconiosis while working as a furnace operator for Alcan Rolled Products-Ravenswood, LLC. The Office of Judges affirmed the claims administrator's decision and held that Mr. Torris had not met the exposure requirements for a valid claim for occupational pneumoconiosis. On appeal, Mr. Torris disagrees and asserts that he has shown he was exposed to the hazards of occupational pneumoconiosis for the entire period of his employment, and therefore, has met the exposure requirements set out in West Virginia Code § 23-4-1 (2008). Alcan Rolled Products-Ravenswood, LLC maintains that it has performed industrial hygiene testing during Mr. Torris's

employment and has sufficiently proven to OSHA that it does not expose its employees to excessive or harmful quantities of dust.

West Virginia Code of State Rules § 85-20-52.2 (2006) states that if an employer submits credible evidence demonstrating that it has been in compliance with OSHA and/or MSHA permissible exposure levels, as determined by sampling and testing performed in compliance with OSHA and/or MSHA regulations, the claims administrator may consider that the dust exposure alleged by the injured employee does not suffice to satisfy the exposure requirements of West Virginia Code §§ 23-4-1(b) (2008) and 23-4-15(b) (2010) for the periods covered by the sampling or the testing. Alcan Rolled Products-Ravenswood, LLC submitted representative sampling to establish that it has been in compliance with OSHA's permissible exposure limit throughout Mr. Torris's employment from February 10, 1997, through August 14, 2009, for the casting department, and also submitted a comprehensive inspection performed by OSHA from June of 1991 through October of 1991. Ultimately, the Office of Judges held that Mr. Torris did not have the requisite exposure to the hazards of occupational pneumoconiosis. The Board of Review reached the same reasoned conclusions in its decision of December 13, 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 4, 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