

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 7, 2015

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

DAVID R. FORD,
Claimant Below, Petitioner

vs.) **No. 15-0047** (BOR Appeal No. 2049616)
(Claim No. 2014008823)

HANOVER RESOURCES, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner David R. Ford, by John H. Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Hanover Resources, LLC, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 23, 2014, in which the Board affirmed a July 17, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 29, 2013, decision rejecting Mr. Ford's application 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. Ford worked as a heavy equipment operator for Hanover Resources, LLC, for over twelve years. During this time, his job duties primarily consisted of operating a bulldozer and motor grader. When he drove the bulldozer he used his right hand to operate a lever that raised and lowered the dozer blade while he steered with his left hand. The motor grader required him to push and pull several levers. Sometime around 2009, Mr. Ford began noticing numbness and tingling in both hands. He received treatment at this time from Wassim S. Saikali, M.D., who believed it was possible that he had carpal tunnel syndrome in both hands. Mr. Ford, however,

did not file an application for workers' compensation benefits at this time, and he continued to work until December 28, 2012. After retiring, Mr. Ford devoted significantly more time to his hobby of restoring old vehicles, and his symptoms grew worse.

The next year, Mr. Ford was treated by Robert P. Kropac, M.D., who found that he had frequent numbness and tingling as well as episodes of nighttime paresthesias in both hands. Dr. Kropac diagnosed him with bilateral carpal tunnel syndrome and recommended that he receive an electromyography (EMG) and nerve conduction study to confirm the diagnosis. Dr. Kropac noted that Mr. Ford's symptoms had not improved even though he stopped working nine months earlier. Based on this diagnosis, Mr. Ford filed an application for workers' compensation benefits. The application was signed by Dr. Kropac. Following this application, J. O. Othman, M.D., performed a nerve conduction study. Dr. Othman found that the study was consistent with severe bilateral carpal tunnel syndrome. Dr. Kropac then responded to a questionnaire from Hanover Resources, LLC, stating that he believed that Mr. Ford's carpal tunnel syndrome was occupationally related. Rebecca Thaxton, M.D., reviewed Mr. Ford's application and found that his condition was not occupationally related because his symptoms should have improved when his work exposure ended.

On October 29, 2013, the claims administrator rejected Mr. Ford's application for workers' compensation benefits based on Dr. Thaxton's opinion. Mr. Ford then testified in a hearing before the Office of Judges. He alleged that his work for Hanover Resources, LLC, subjected him to significant high force, repetitive, and awkward manual positioning. He stated that operation of the levers on the bulldozer and motor grader was taxing on his hands. He also stated that the equipment constantly vibrated. Mr. Ford admitted that he had worked restoring old vehicles as a hobby for the past twenty years. He stated that prior to retiring he spent on average a day and a half per week engaged in this hobby. He testified that after he retired he spent three to four days a week working on these vehicles. He also testified that this hobby involved the use of handheld mechanical and welding tools. He further admitted that his symptoms grew worse after he retired from his job with Hanover Resources, LLC, and that the swelling in his wrists did not begin until after he had retired. Prasadarao B. Mukkamala, M.D., then evaluated Mr. Ford. He found that Mr. Ford had bilateral carpal tunnel syndrome but that his job duties did not involve the type of high force or repetitive movements which would be expected to contribute to carpal tunnel syndrome. Dr. Mukkamala also believed that, if his carpal tunnel syndrome was related to his occupation, Mr. Ford's symptoms should have improved instead of worsening after he retired. Dr. Mukkamala noted that Mr. Ford's hobby of restoring old vehicles involved the use of hand tools that could have contributed to his condition. On July 17, 2014, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Office of Judges' Order on December 23, 2014, leading Mr. Ford to appeal.

The Office of Judges concluded that Mr. Ford did not demonstrate that he developed carpal tunnel syndrome in the course of and resulting from his employment. Despite finding that he had severe bilateral carpal tunnel syndrome, the Office of Judges determined that the evidence in the record did not indicate that the condition was occupationally related. It based this determination primarily on Mr. Ford's admission in his hearing testimony that his symptoms grew significantly worse after he stopped working. The Office of Judges found that this

admission supported the opinions of Dr. Thaxton and Dr. Mukkamala who found that Mr. Ford's carpal tunnel syndrome was not occupationally related. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Ford has not demonstrated that he developed carpal tunnel syndrome in the course of and resulting from his employment. It is clear, based on the medical evidence in the record, that Mr. Ford has severe carpal tunnel syndrome. However, the evidence in the record does not establish a sufficient causal connection between his carpal tunnel syndrome and his employment. Mr. Ford has alleged that his employment involves awkward wrist positioning and repetitive movement, but the record demonstrates that his symptoms, especially the swelling in his wrist from the condition, grew significantly worse after he stopped working. The Office of Judges was within its discretion in relying on the opinions of Dr. Thaxton and Dr. Mukkamala.

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 7, 2015

CONCURRED IN BY:

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