

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JAMES D. DANIELS,
Claimant Below, Petitioner

August 5, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100807 (BOR Appeal No. 2043887)
(Claim No. 2009070743)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

ALCAN ROLLED PRODUCTS,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 3, 2010, in which the Board affirmed a December 1, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability for Mr. Daniel's back injury. The appeal was timely filed by the petitioner and a response was filed by Alcan Rolled Products. 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, response, 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. Daniels asserts he suffered a work-related injury while pitching cardboard, wood spacers, metal spacers, and metal binders into a dumpster. Mr. Daniels states that his deposition testimony and visit to the plant doctor, Dr. Witt, supports a finding Mr. Daniels suffered a work-related injury. Alcan Rolled Products asserts Mr. Daniels injury is not work-related and the Board of Review properly denied compensability. Mr. Daniels medical reports from the emergency room visit indicate Mr. Daniels denied injury as the cause of his back pain and prior diagnosis of degenerative disc disease in 2002 and 2004.

The Office of Judges determined the relevant medical evidence and deposition testimony of Mr. Daniels did not establish a work-related injury. (December 1, 2009 Office of Judges Order, p. 5). It noted that “the preponderance of the evidence shows the claimant did not suffer a lumbar disc herniation in the course of or as a result of his employment on November 12, 2008. *Id.* Further, it noted Mr. Daniels denied injury during the emergency room visit on November 21, 2008. *Id.* The Office of Judges, too, found no basis for compensability or for disputing the Claims Administrator’s findings. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 3, 2010.

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 denial of the petitioner’s request for compensability is affirmed.

Affirmed.

ISSUED: August 5, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum