

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROGER L. CRUM,
Claimant Below, Petitioner

vs.) **No. 100880 (BOR Appeal No. 2044021)**
(Claim No. 2008045497)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

COAL RIVER MINING, LLC,
Employer Below, Respondent

FILED
July 29, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RECOMMENDED MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 29, 2010, in which the Board affirmed a January 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 11, 2008 Order, which rejected Mr. Crum's application for benefits due to his failure to demonstrate an injury that occurred in the course of and as a result of his employment. The appeal was timely filed by the petitioner, and Coal River Mining, LLC filed a response. 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 parties' submissions 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.

The Board of Review affirmed the Office of Judge's Order, which rejected Mr.

Crum's application for benefits. Mr. Crum argues that his testimony of a work-related injury is sufficient to establish the occurrence of a work-related injury, despite his incorrect recollection of certain dates. Further, Mr. Crum argues that Dr. Prasadarao Mukkamala's report, which opined that no work-related injury occurred, should not be given weight due to the fact that ten months elapsed between the alleged injury and Dr. Mukkamala's examination.

The Office of Judges found no credible evidence that Mr. Crum suffered any work-related injury, which he alleged occurred on May 4, 2008. (Jan. 13, 2010 Office of Judges Order, p.4.) Claimant reported to the emergency room on May 18, 2008, which was 10 days after the date on which he claimed he reported to the hospital. *Id.* at p. 5. At the emergency room, no history of any injury was documented, but he was diagnosed with cervical spondylosis. *Id.* at p. 4. Mr. Crum stated that the emergency room physician related his neck condition to his work in the mines, but this is not documented by the emergency room physician or any other physician. *Id.* Thus, the Office of Judges found no causal link between Mr. Crum's claimed injury and his cervical spondylosis. *Id.* at pps. 4-5.

The Office of Judges also highlighted discrepancies in Mr. Crum's account of his injury and treatment. *Id.* at p. 5. Mr. Crum testified that he was actually injured on May 4, 2008, despite the date of injury being reported as May 8, 2008. *Id.* He explained that he had to wait until May 8, 2008 to receive treatment, which he claimed was a Sunday, because of his work schedule. *Id.* May 8, 2008, however, was a Thursday. *Id.* Further, Mr. Crum did not report to the emergency room until two weeks after his claimed injury. *Id.* Finally, he testified that he was taken off work on May 18, 2008, but the records indicate that he was taken off work on May 28, 2008. *Id.* The Office of Judges concluded that, despite diagnostic testing indicating degenerative changes in Mr. Crum's cervical spine, "the evidence fails to establish any causal link between such and the duties of the claimant's employment with the employer and the alleged event of May 4, 2008." *Id.* at p. 6. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision dated June 29, 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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the rejection of Mr. Crum's claim is affirmed.

Affirmed.

ISSUED: July 29, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh