

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**HIRAM PREECE,
Claimant Below, Petitioner**

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

**vs.) No. 101035 (BOR Appeal No. 2044178)
(Claim No. 2009054875)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent**

and

**EAGLE CREEK MINING, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 10, 2010, in which the Board affirmed a February 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability. The appeal was timely filed by the petitioner and a response was filed by the Eagle Creek Mining, LLC. 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. Preece asserts the relevant medical evidence supports a finding that he suffered a work-related back injury. Eagle Creek Mining asserts Mr. Preece's medical records do not establish that he suffered a work-related injury, co-worker's signed affidavits setting forth no knowledge of Mr. Preece's injury, and the medical records provide conflicting evidence regarding the instant injury.

In its Order denying compensability for the instant injury the Office of Judges found by a preponderance of the evidence that Mr. Preece did not suffer a work-related injury. (February 24, 2010 Office of Judges Order, p. 4). It noted Mr. Preece claimed a co-worker witnessed the injury, however, no testimony or statement from that co-worker was in the record, the Equipment Operator's Pre-shift Checklist did not indicate any issues with the equipment, and there existed conflicting evidence regarding the nature of the injury. *Id.*, pp. 4-5. It determined the inconsistent statements of Mr. Preece regarding the alleged injury were not persuasive. *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 conclusions in affirming the Office of Judges in its decision of August 10, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provisions, 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