

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BRUCE M. BREWER, Petitioner

April 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 10-4023 (BOR Appeal No. 2044570)**
(Claim No. 2009003430)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
O. J. WHITE TRANSFER AND STORAGE, Respondent**

MEMORANDUM DECISION

Petitioner Bruce M. Brewer, by M. Jane Glauser¹, his attorney, appeals the decision of the Board of Review. O. J. White Transfer and Storage, by George Roeder, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 3, 2010, in which the Board affirmed and modified an April 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 10, 2009, decision holding the claim compensable for a right knee contusion. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition 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.

In its Order, the Board of Review: adopted the Office of Judges' Findings of Fact; affirmed the Office of Judges' holding that the claim is compensable for a November 24, 2008, right knee contusion; and modified the Office of Judges' Order to reflect a grant of temporary total disability benefits from February 16, 2009, to March 16, 2009, based on a finding that Mr. Brewer was unable

¹This Court notes that while Ms. Glauser filed a petition on behalf of Mr. Brewer, as of February 1, 2011, Ms. Glauser has withdrawn from the representation of Mr. Brewer.

to work during that period as a result of his compensable injury. Mr. Brewer asserts that the November 24, 2008, right knee injury caused him to aggravate a preexisting left knee condition and that this left knee condition should be held compensable.

The Office of Judges found that, based upon Mr. Brewer's history of problems with his left knee prior to the November 24, 2008, work-related injury, the left knee is not a compensable component of the claim. The Office of Judges noted that the February 14, 2009, report of an occupational injury for the November 24, 2008, incident makes no mention of injury to the left knee. Moreover, the evidence of record does not show that any physician related Mr. Brewer's left knee condition to the compensable injury of November 24, 2008.

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: April 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin