

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**DREMA E. ADKINS, widow of CECIL B.
ADKINS (deceased), Petitioner**

vs.) **No. 101117 (BOR Appeal No. 2044060)
(Claim No. 2006030963)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CEDAR COAL COMPANY, Respondent**

FILED
June 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner, Drema E. Adkins, widow of Cecil B. Adkins, by Robert M. Williams, appeals the Board of Review Order denying her application for dependent's benefits. The West Virginia Office of Insurance Commissioner, by Mary Rich Maloy, its counsel, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 10, 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 1, 2007, Order, which denied Ms. Adkins's application for dependent's benefits following her husband's death. The appeal was timely filed by the petitioner, and the West Virginia Office of Insurance Commissioner 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 denied Ms. Adkins's application for dependent's benefits. Ms. Adkins argues that three physicians have opined that occupational pneumoconiosis was a material contributing factor in her husband's death, which entitles her to dependent's benefits.

The Office of Judges, however, noted that the Occupational Pneumoconiosis Board ("OP Board") reached the opposite conclusion. Following the OP Board's review of the evidentiary record,

it concluded that occupational pneumoconiosis was not a material contributing factor in the decedent's death. Rather, the OP Board considered the decedent's significant smoking history of 2 ½ packs per day for 35 years. Additionally, the OP Board reviewed a chest CT scan taken about one month prior to the decedent's death. This scan revealed only a minimal degree of simple pneumoconiosis. Indeed, the decedent had received only a 5% award for occupational pneumoconiosis. Thus, the Office of Judges denied Ms. Adkins's application for dependent's benefits. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its August 10, 2010, decision.

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 denial of Ms. Adkins's request for dependent's benefits is affirmed.

Affirmed.

ISSUED: June 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin disqualified.