

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHARLES S. STONE, Petitioner

February 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101386 (BOR Appeal No. 2044288)**
(Claim No. 2009077434)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
HUNTINGTON ALLOYS CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner Charles S. Stone, by Edwin Pancake, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the application for benefits. Huntington Alloys Corporation, by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 29, 2010, in which the Board reversed a March 10, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's February 6, 2009, rejection of the claim. 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 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 held that the petitioner failed to establish by a preponderance of the evidence that the injury was a result of his employment. Petitioner argues that picking

up gloves is a usual and ordinary duty of his employment and under *Pennington v. WVCC*, 159 W.Va. 370, 222 S.E.2d 579 (1976), his claim should be held compensable.

In reversing the Office of Judges Order, the Board of Review noted that simply because something happens while the claimant is at work does not mean it was the result of the employment. (September 29, 2010, Board of Review Order, p. 2). The Office of Judges found it reasonable to presume picking up gloves was required of employees; however, the Board of Review disagreed and found the record lacked the requisite evidence to establish petitioner's condition resulted from his employment.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: : February 22, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman