

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MICHAEL S. STILTNER, Petitioner

vs.) **No. 101564 (BOR Appeal No. 2044598)**
(Claim No. 2009061478)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
SARA LEE, Respondent

MEMORANDUM DECISION

Petitioner, Michael S. Stiltner, by Samuel F. Hanna, appeals the Board of Review Order rejecting his claim. Sara Lee, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 9, 2010, in which the Board affirmed an April 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 30, 2008, Order, which rejected Mr. Stiltner's claim. The appeal was timely filed by the petitioner, and Sara Lee 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.

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 Judges' Order, which rejected Mr. Stiltner's claim for benefits. Mr. Stiltner contends that he sustained a right inguinal hernia while lifting bread trays in the course of and as a result of his employment. Mr. Stiltner contends that the Administrative Law Judge improperly found that there was no evidence to support his contention that the injury is work-related.

The Office of Judges, however, stated that there was no medical confirmation that his hernia resulted from his employment. Although medical evidence is not required in every workers' compensation claim, it is necessary to establish compensability for some injuries that would otherwise require mere speculation in establishing a causal connection between employment and the injury. *Deverick v. State Comp. Dir.*, 150 W. Va. 145, 144 S.E.2d 498 (1965). The Office of Judges

found that a right inguinal injury is the type of injury for which a proffer of medical evidence is necessary to establish that the medical condition resulted from his employment. For this reason, the Office of Judges affirmed the rejection of Mr. Stiltner's claim. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 9, 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, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the rejection of Mr. Stiltner's claim is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum