

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CARLES G. MITCHELL, Petitioner

July 6, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0032 (BOR Appeal No. 2044733)
(Claim No. 2003013918)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
REMINGTON, LLC, Respondent

MEMORANDUM DECISION

Petitioner Carles G. Mitchell, by John Shumate, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the addition of lumbar intervertebral displacement and thoracic region injury as compensable components of the claim. The West Virginia Office of Insurance Commissioner, by Jack Rife, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 8, 2010, in which the Board affirmed a June 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 3, 2009, decision denying the requested additional compensable components. 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 this case, Mr. Mitchell was a roof bolter with Remington, LLC. He was injured on August 28, 2002, when a rock hit him, resulting in a head injury and an open wound to the forehead. The claim was subsequently held compensable for the cervical spine.

On December 3, 2009, the claims administrator denied a request to add lumbar intervertebral displacement and thoracic region injury as compensable components of the claim based on the report of Dr. Walden. Dr. Walden, in his report on October 19, 2009, noted that Mr. Mitchell had chronic thoracic and lumbar pain since he sustained a separate injury in 2000. Accordingly, Dr. Walden concluded that the medical documentation does not support a causal relationship between the August 28, 2002, injury and Mr. Mitchell's current thoracic and lumbar problems.

The Office of Judges, in affirming the claims administrator's denial of additional compensable components, concluded that Mr. Mitchell did not suffer a lumbar intervertebral displacement or thoracic region injury during the work-related accident on August 28, 2002. The Office of Judges noted that Mr. Mitchell had suffered both a lumbar and thoracic spine injury in previous work-related injuries. Ultimately, the Office of Judges found the evidence submitted by Mr. Mitchell was not persuasive in connecting the lumbar and thoracic spine issues to the August 28, 2002, injury. The Board of Review reached the same reasoned conclusion in its decision of December 8, 2010.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 6, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh