

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JOSEPH P. STEIN, Petitioner

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

vs.) No. 11-0037 (BOR Appeal No. 2044736)
(Claim No. 2008037742)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WHEELING-PITTSBURGH STEEL CORP.,
Respondent**

MEMORANDUM DECISION

Petitioner Joseph P. Stein, by William Gallagher, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the addition of L5-S1 disc herniation as a compensable component in the claim. Wheeling-Pittsburgh Steel Corp., by Lucinda Fluharty, 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 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 14, 2008, decision denying an additional compensable component. 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. Stein worked as a heater helper for Wheeling-Pittsburgh Steel Corp. He injured his lower back on March 13, 2008, and was diagnosed with a lumbosacral strain. Subsequently, Mr. Stein requested that a L5-S1 disc herniation be added as a compensable

component in the claim. The claims administrator denied the request for the additional compensable component on April 14, 2008.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of the additional compensable component, noted that the L5-S1 disc herniation preexisted the compensable injury. Mr. Stein disagrees and asserts that according to Dr. Mascio's testimony the disc herniation is a new finding on the April 1, 2008, MRI. Wheeling-Pittsburgh Steel argues that an MRI from 2004 and an MRI from 2005 both show that the herniation was present before the injury Mr. Stein claims caused the condition occurred. The Office of Judges noted that different language was used on the MRI reports, however, Dr. Langa found that the bulge/herniation remained the same throughout all reports.

In reaching the conclusion that the L5-S1 disc herniation was not a compensable component of this claim, the Office of Judges considered various MRI reports, and the opinions of Drs. Langa, Mascio, and Kovalick. It was determined that Dr. Langa's report was more persuasive. The Office of Judges found the preponderance of the evidence did not establish that the L5-S1 disc herniation was related to the compensable injury of March 13, 2008. 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:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum