

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 8, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**JAMES V. WEST,
Claimant Below, Petitioner**

vs.) **No. 11-0827** (BOR Appeal No. 2045194)
(Claim No. 2010103269)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent**

and

**DIVERSIFIED ENTERPRISE, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner James V. West, by Reginald Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Diversified Enterprise, Inc., by Peter Rich, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 22, 2011, in which the Board affirmed an October 19, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 30, 2009, decision denying Mr. West's application for workers' compensation benefits for occupational hearing loss. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. West worked as a construction worker for Diversified Enterprise, Inc. On July 17, 2009, he filed an application for workers' compensation benefits for occupational hearing loss. On September 30, 2009, the claims administrator denied the application, indicating that the disability Mr. West complained of was not due to an exposure received in the course of and resulting from his employment.

The Office of Judges held that the evidence did not establish that Mr. West suffered from noise induced hearing loss as a result of the workplace. Mr. West disputes this finding and asserts that he was exposed to an occupational noise hazard and therefore the claim should be held compensable. Diversified Enterprise maintains that Mr. West has not demonstrated the hearing loss is due to his work, noting that the hearing loss is not noise induced, and his work history with Diversified is intermittent.

In affirming the claims administrator's Order, the Office of Judges noted that the claimant has a prior occupational hearing loss claim in which he received a permanent partial disability award. The Office of Judges pointed out that the current evidence establishes that he has not suffered a progression of the hearing loss from the prior claim. It further noted that Mr. West's employment history with Diversified is sporadic. Thus, the Office of Judges concluded that Mr. West does not suffer from hearing loss as a result of his work with Diversified Enterprise. The Board of Review reached the same reasoned conclusions in its decision of April 22, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 8, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II