

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 8, 2013

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

HANK E. BLAIR,
Claimant Below, Petitioner

vs.) **No. 11-1066** (BOR Appeal No. 2045610)
(Claim No. 2010109925)

LOGAN-MINGO AREA MENTAL HEALTH, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Hank E. Blair, by Anne L. Wandling, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Logan-Mingo Area Mental Health, Inc., by Marion Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 21, 2011, in which the Board affirmed a February 18, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 5, 2009, decision denying Mr. Blair's claim for carpal tunnel syndrome. 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. Blair worked as a bus driver and maintenance worker for Logan-Mingo Area Mental Health, Inc. On November 5, 2009, the claims administrator's decision denied Mr. Blair's claim for carpal tunnel syndrome because the disability was not due to an injury received in the course of and resulting from his employment and an occupational disease did not occur.

The Office of Judges affirmed the claims administrator's decision, and held that the preponderance of the evidence did not establish that Mr. Blair's carpal tunnel syndrome was

work-related. On appeal, Mr. Blair disagrees and asserts that Dr. Nadar has clearly shown that Mr. Blair's carpal tunnel syndrome is a result of his work activities. Logan-Mingo Area Mental Health maintains that Mr. Blair has not submitted evidence to demonstrate either that the Board of Review was wrong as a matter of law or that it cannot be supported by the evidence of the record.

On November 22, 2002, Mr. Blair was treated at Williamson Memorial Hospital for right hand pain and diagnosed with fracture of the right fifth metacarpal that required surgery. He sought treatment for his right hand again in 2003. On September 9, 2009, Dr. Nadar concluded that Mr. Blair had bilateral carpal tunnel syndrome as a work-related injury because he does a lot of repetitive work, such as lifting and driving, and has no other clinical condition that caused his symptoms. Mr. Blair's nerve conduction results showed mild bilateral median nerve entrapment distally, consistent with clinical syndrome or carpal tunnel electrophysiologically mild. On November 3, 2009, Dr. Thaxton reviewed whether Mr. Blair's carpal tunnel syndrome appeared to be work-related and determined that he was in the "uncertain" category on the Moore-Garg Strain Index. Dr. Mukkamala's report dated September 3, 2010, stated that Mr. Blair was scheduled for an evaluation on September 2, 2010, but failed to appear for evaluation, and Dr. Mukkamala concluded that the carpal tunnel syndrome was not caused by occupational activities based on the medical records that had been provided to him and Mr. Blair's deposition. Dr. Mukkamala later performed an independent medical evaluation and continued to opine that the bilateral carpal tunnel syndrome was not causally related to Mr. Blair's employment. Dr. Mukkamala's records noted that Mr. Blair stated he was doing very well and had no symptoms. Dr. Mukkamala opined that being overweight is a significant risk factor for the development of carpal tunnel syndrome.

West Virginia Code State Rules § 85-20-41 (2006) states that in claims for carpal tunnel syndrome, a determination of whether the condition is work-related must be made through a careful review of the claim history, physical examination, and appropriate diagnostic tests and examinations. The Office of Judges noted that Mr. Blair had a history of problems with his right hand including surgery in 2002, and sought treatment for his right hand again in February of 2003. It further noted Dr. Mukkamala's opinion that Mr. Blair's job would not have caused his carpal tunnel syndrome, and that obesity is a factor that might make him more likely to develop carpal tunnel syndrome. The Office of Judges stated that Mr. Blair's job was not one of the jobs listed in West Virginia Code State Rules § 85-20 (2006) as high risk for carpal tunnel syndrome that require continual rapid forceful fingering, gripping, and twisting motions, and that Mr. Blair's job consisted of a variety of activities without the constant types of activities deemed to cause carpal tunnel syndrome. The Office of Judges concluded that Mr. Blair's carpal tunnel syndrome is not work-related. The Board of Review reached the same reasoned conclusions in its decision of June 21, 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: May 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