

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**LINDA HILL, WIDOW OF JAMES R. HILL (DECEASED),
Claimant Below, Petitioner**

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0625 (BOR Appeal No. 2046597)
(Claim No. 2008025660)

**HUNTINGON ALLOYS CORPORATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Linda Hill, widow of James R. Hill, by Robert M. Williams, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Huntington Alloys Corporation, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 26, 2012, in which the Board affirmed an October 17, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 26, 2009, decision denying Ms. Hill's request for dependent benefits. 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. Hill was employed by Huntington Alloys Corporation, as a crane and furnace operator for twenty-nine years. According to his death certificate, Mr. Hill died on December 23, 2006, from Stage III lung cancer. Ms. Hill filed a dependent's claim that was rejected by the claims administrator on a finding that occupational pneumoconiosis was not a material factor in Mr. Hill's death. The Office of Judges affirmed the claims administrator's decision and held that occupational pneumoconiosis was not a material contributing factor in Mr. Hill's death. Ms. Hill disagrees and asserts that Dr. Gaziano opined that occupational pneumoconiosis was a material contributing cause of Mr. Hill's death and therefore, benefits should have been awarded to Ms.

Hill. Huntington Alloys Corporation maintains that that a preponderance of the evidence shows that Mr. Hill died of lung cancer related to his cigarette smoking.

Dr. Gaziano opined that Mr. Hill's lung cancer and subsequent death were significantly due to his occupational exposure to asbestos. Dr. Gaziano noted that smoking may have also played an important factor in Mr. Hill's death, but he had no information concerning the presence or existence of such history. Dr. Zaldivar concluded that there was no evidence to justify a diagnosis of asbestos or of pleural thickening due to asbestos. Dr. Zaldivar found that Mr. Hill's lung cancer was a result of his smoking and not related to his occupation. On October 6, 2005, the Occupational Pneumoconiosis Board reviewed Mr. Hill's chest x-rays and noted a finding of pleural changes, which might be related to previous asbestos exposure. Members of the Occupational Pneumoconiosis Board testified on September 21, 2011, that Mr. Hill did not have asbestos lung disease but rather subpleural fat as confirmed by subsequent CT scans. The Occupational Pneumoconiosis Board concluded that Mr. Hill died of lung cancer as a result of his cigarette smoking and not as a result of any occupational lung disease.

The Office of Judges concluded that without the complete medical file and history, that Dr. Gaziano could not render an informed conclusion based upon the facts of the claim. The Office of Judges held that occupational pneumoconiosis was not a material contributing factor in Mr. Hill's death. The Board of Review reached the same reasoned conclusions in its decision of April 26, 2012. 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: January 16, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating