

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

ROBERT L. NOON,
Claimant Below, Petitioner

vs.) **No. 13-0639** (BOR Appeal No. 2047864)
(Claim No. 2011032774)

MEDFORD TRUCKING, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robert L. Noon, by Patrick Kevin Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Medford Trucking, LLC, by Daniel G. Murdock, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 21, 2013, in which the Board affirmed an October 18, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 18, 2011, decision rejecting the claim. 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. Noon worked as a truck driver for Medford Trucking, LLC. On January 31, 2011, Mr. Noon was walking around his truck when his right leg gave out and he fell. Mr. Noon filed an application for workers' compensation benefits based on this fall. The physician's portion of the application was completed by Dr. Cottrell, who diagnosed Mr. Noon with a lumbar strain and sciatica. On February 18, 2011, the claims administrator rejected the claim. Following the denial, Mr. Noon was deposed. He testified that he had sustained a prior injury to his back. He stated that following that injury his right leg would frequently go numb and give out. On October 18,

2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on May 21, 2013, leading Mr. Noon to appeal.

The Office of Judges concluded that on January 31, 2011, Mr. Noon sustained an injury to his low back and right leg when his right leg gave out. But the Office of Judges concluded that the injury did not appear to be caused by any work activity or by Mr. Noon's work environment. The Office of Judges concluded that Mr. Noon's injury was the result of a non-occupational and pre-existing degenerative disc disease. In making this determination the Office of Judges relied on a September 8, 2011, Order of the Office of Judges in which the Office of Judges attributed Mr. Noon's symptoms following the January 31, 2011, fall to degenerative disc disease and not to his prior May 19, 2010, lumbar sprain. The Office of Judges also relied on an independent medical evaluation of Dr. Bachwitt, in which Dr. Bachwitt pointed out that Mr. Noon had mild degenerative disc disease and facet arthropathy. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Noon has not presented sufficient evidence to show that he sustained a new injury in the course of and resulting from his employment on January 31, 2011. The independent medical evaluation of Dr. Bachwitt shows that Mr. Noon has mild degenerative disc disease and the evidence in the record indicates that Mr. Noon's fall was related to this non-compensable condition. Mr. Noon's testimony further shows that his leg frequently gave out prior to the January 31, 2011, fall. Although Mr. Noon may have been at work when he experienced an onset of symptoms, there is no evidence showing that his injuries are the result of his employment. There is no evidence in the record showing that his work conditions caused an injury or exacerbated his symptoms.

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 14, 2014

CONCURRED IN BY:

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

Justice Brent D. Benjamin, not participating