

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 14, 2012

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

CHAD E. DANIELS, Petitioner

**vs.) No. 100679 (BOR Appeal No. 2043743)
(Claim No. 2006052122)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ROCKHOUSE CREEK DEVELOPMENT
CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner Chad E. Daniels, by John Blair, his attorney, appeals the decision of the Board of Review. Rockhouse Creek Development Corporation, by Brandon Shumaker, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 29, 2010, in which the Board reversed a September 17, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 11, 2009, decision denying Mr. Daniels's request to reopen the claim for further consideration of additional permanent partial disability benefits arising from bilateral carpal tunnel syndrome. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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 its Order reversing the September 17, 2009, Office of Judges Order, the Board of Review held that Mr. Daniels did not suffer a progression or aggravation of his compensable bilateral carpal

tunnel syndrome, and therefore reinstated the March 11, 2009, claims administrator's decision denying Mr. Daniels's request to reopen the claim for further consideration of additional permanent partial disability benefits. Mr. Daniels disputes this finding and asserts, per the opinion of Dr. Poletajev, that his bilateral carpal tunnel syndrome has progressed and he is entitled to a reopening of the claim.

The Board of Review relied primarily on *Harper v. State Workmen's Compensation Commissioner*, 160 W.Va. 364, 234 S.E.2d 779 (1977), in which this Court held: "For purposes of obtaining a reopening . . . , the claimant must show a prima facie cause, which means nothing more than any evidence which would tend to justify, but not to compel the inference that there has been a progression or aggravation of the former injury." As noted by the Board of Review, although Dr. Poletajev used the word "progression" to describe Mr. Ellison's current condition, the record as a whole does not contain evidence sufficient to justify the inference that Mr. Ellison suffered a progression or aggravation of his compensable injuries.

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: June 14, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman