

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**RETA ROBINSON, widow of
ORVAL PAUL ROBINSON (deceased),
Claimant Below, Petitioner**

FILED
July 19, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 100783 (BOR Appeal No. 2043855)
(Claim No. 2005011832)**

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

and

**UNION CARBIDE CORPORATION,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated May 25, 2010, in which the Board affirmed a November 10, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of the petitioner's request for dependent's benefits on September 24, 2007. The appeal was timely filed by the petitioner, and Union Carbide Corporation filed a response. 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, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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.

The Board of Review affirmed the denial of Ms. Robinson's request for dependent's

benefits. Ms. Robinson asserts that Linda Eakle, D.O., in completing her decedent's death certificate and listing asbestosis as a cause of his death, stated that occupational pneumoconiosis was a significant contributing cause of his death. Ms. Robinson argues that this should be given greater weight than Union Carbide's retained physician, who came to a contrary conclusion, because the retained physician was "bought and paid for."

As West Virginia Code § 23-4-10 directs that the Occupational Pneumoconiosis Board is to determine all medical questions concerning whether an employee died from occupational pneumoconiosis, the Office of Judges relied upon the Occupational Pneumoconiosis Board's finding that Mr. Robinson's death was caused by cardiac disease. (Nov. 10, 2009 Office of Judges Order, p. 8.) Although the Occupational Pneumoconiosis Board acknowledged that Mr. Robinson had an asbestosis related disease, it found that it was not a material contributing factor to his death. *Id.* Indeed, Mr. Robinson's medical records do not show that he was treated for occupational pneumoconiosis in the later years of his life. *Id.* Rather, his hospitalizations were the result of his heart disease, which required bypass surgery and a pacemaker. *Id.* Furthermore, the Occupational Pneumoconiosis Board found that Dr. Eakle did not complete the death certificate properly due to the complete absence of any notation regarding Mr. Robinson's severe cardiac disease. *Id.* at p. 7. The Board of Review reached the same reasoned conclusion in its decision of May 25, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of Ms. Robinson's request for dependent's benefits is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh