

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

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

**GARY BAILEY,
Claimant Below, Petitioner**

**vs.) No. 100785 (BOR Appeal No. 2043917)
(Claim No. 2009069396)**

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

and

**B J SERVICES COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 3, 2010, in which the Board affirmed a December 9, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Bailey's claim for a compensable work injury. The appeal was timely filed by the petitioner and a response was filed by B J Services Company. 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, response, 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 holding of the Office of Judges denying compensability based upon the failure of Mr. Bailey to present any evidence of a work-related injury. Mr. Bailey asserts the evidence of record supports a finding that he suffered a work-related injury and the minor inconsistencies related to the time of his injury is immaterial to the determination of compensability. The Office of Judges in its Order held that Mr. Bailey claimed a work-related injury; however, during the hearing in this matter Mr. Bailey testified regarding the work-related injury while affidavits filed by co-employees and supervisors attested to no knowledge of an injury to Mr. Bailey. (December 9, 2009 Office of Judges Order, p. 3). It also noted that there were major variances in the record regarding the representations of Mr. Bailey and the remainder of the record including the treatment notes indicating an injury prior to October 8, 2008. *Id.*, p. 5. It discounted Mr. Bailey's claim for a compensable injury noting that it is not a small thing that the caregiver's treatment notes vary greatly with the representations of Mr. Bailey, that persons identified as eyewitnesses do not have any recollection of the injury, and the person identified as a trainee appears to be a person employed by B J Services Company for five years. *Id.*, p. 6. The Office of Judges, too, found no basis for an award or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of June 3, 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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of compensability for a work-related injury is affirmed.

Affirmed.

ISSUED: July 21, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh