

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

HERBY PRUITT,
Claimant Below, Petitioner

vs.) No. 100843 (BOR Appeal No. 2043945)
(Claim No. 2010103712)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

ELLIS SUPPLY COMPANY, INC.,
Employer Below, Respondent

FILED

June 9, 2011

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 28, 2010, in which the Board affirmed a December 4, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 8, 2009 Order rejecting Mr. Pruitt's claim because "[t]here was no specific, isolated, fortuitous, occurrence to cause the injury." The appeal was timely filed by the petitioner, and a response was filed by Ellis Supply Company, Inc. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. 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 rejection of Mr. Pruitt's claim. Mr. Pruitt argues

that he sustained a work-related injury on March 1, 2009 while delivering a concrete step to a job site. Mr. Pruitt did not seek medical attention until March 9, 2009, and that medical record details complaints of flu-like symptoms only. There are additional medical records that make no note of back pain or a specific back injury, but Mr. Pruitt attributes this lacking evidence to mis-diagnoses of his symptoms.

The Office of Judges reviewed Mr. Pruitt's medical records around the time of his alleged injury. It noted that Mr. Pruitt first reported to the doctor on March 9, 2009, but he complained only of flu symptoms. (Dec. 4, 2009 Office of Judges Order, p. 4.) There is no indication of back pain or a back injury. *Id.* Similarly, on March 12, 2009, Mr. Pruitt returned to the doctor but did not mention a work injury. *Id.* Although he did complain of back pain, he indicated only that it accompanied his cough. *Id.* at pps. 4-5. On April 13, 2009, Mr. Pruitt returned to the doctor. *Id.* at p. 5. At this time he complained of back pain, but he indicated that the pain had been present for two weeks. *Id.* This would place his alleged injury date later than the asserted March 1, 2009 date. *Id.* Additionally, there is no indication that Mr. Pruitt reported any work injury as a cause of his pain. *Id.*

Finally, Mr. Pruitt failed to submit a proper claim form in contravention of West Virginia Code § 23-4-15, which requires "the application for compensation [to] be made on the form or forms prescribed by the Insurance Commissioner . . . and filed . . . within six months from and after the injury . . . and unless filed within the six months period, the right to compensation . . . is forever barred, such time limitation being . . . a condition of the right and hence jurisdiction[.]" Thus, the Office of Judges affirmed the rejection of Mr. Pruitt's claim, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 28, 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 the petitioner's claim is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum
Justice Thomas E. McHugh