

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JOHN S. GUIDO,
Claimant Below, Petitioner

August 5, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100912 (BOR Appeal No. 2043951)
(Claim No. 2009066315)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

EASTERN ASSOCIATED COAL CORP., LLC,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 25, 2010, in which the Board affirmed a December 10, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability. The appeal was timely filed by the petitioner and a response was filed by the Eastern Associated Coal Corp., LLC. 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.

Mr. Guido asserts his left inguinal hernia was received in the course of and as a result of his employment and should be determined a compensable injury. Further, Mr. Guido asserts his treating physician determined the injury was work-related and caused by compensating for a previous injury and Mr. Guido previous diagnosis of left inguinal hernia prior to the work injury is not dispositive. Eastern Associated Coal asserts Petitioner's report of injury, medical records, and other supporting documentation presents conflicting evidence related to the injury.

In its Order the Board of Review determined the left inguinal hernia claimed by Mr. Guido was not work-related injury and affirmed the Office of Judges denial of compensability. Previously, the Office of Judges held in its Order that the weight of the evidence did not support Mr. Guido's assertion of a work related injury. (December 10, 2009 Office of Judges Order, p. 3). It further noted Mr. Guido, in completing the sickness and accident benefits form, indicated he would not be applying for worker's compensation benefits for the injury, there are conflicting dates given regarding the date of injury, and the claim of injury is inconsistent with the supervisor's affidavit. *Id.*, pp. 3-4. Finally, in reaching its conclusion to deny compensability it noted Mr. Guido's relevant medical records indicated a left inguinal hernia diagnosis on June 5, 2007, some time prior to the referenced injury date. The Office of Judges, too, found no basis for compensability, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of June 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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the petitioner's request for compensability is affirmed.

Affirmed.

ISSUED: August 5, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum