

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**July 21, 2011**

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

**DAVID K. WALKER,  
Claimant Below, Petitioner**

**vs.) No. 100919 (BOR Appeal No. 2044157)  
(Claim No. 2009087890)**

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

**and**

**MOUNTAINEER GAS COMPANY,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated June 28, 2010, in which the Board affirmed a February 3, 2010, 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 Mountaineer Gas 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 and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly added 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 Office of Judges reviewed the instant claim and found Mr. Walker did not suffer a work-related injury and is not entitled to compensability for the same. Mr. Walker asserts that his failure to follow Mountaineer Gas Company's policy regarding work injuries should not preclude him from compensability for the instant injury. Mr. Walker further asserts the relevant evidence supports a finding that he suffered a work-related injury. On the other hand, Mountaineer Gas Company asserts Mr. Walker has a history of following the injury reporting policy and failed to do so in this claim, there is no documented video evidence of Mr. Walker falling, and Mr. Walker continued working for several weeks after the injury without any report regarding the injury. In its Order affirming the Claim's Administrator's denial of compensability the Office of Judges noted Mr. Walker claimed worsening back pain from the date of injury, March 18, 2009, until his admission to the hospital; however Mr. Walker continued with his normal work routine, failed to notify his treating physician of back pain, and failed to report the injury to Mountaineer Gas Company. (February 3, 2010 Office of Judges Order, p. 5). It noted further that Mr. Walker has a prior history of reporting work injuries in accordance with Mountaineer Gas Company's injury reporting policy. *Id.* 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 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 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: 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