

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

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

**RODERICK L. CLICK,
Claimant Below, Petitioner**

**vs.) No. 100922 (BOR Appeal No. 2044002)
(Claim No. 2009062277)**

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

and

**CENTURY ALUMINUM OF WEST VIRGINIA, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated June 29, 2010, in which the Board affirmed a December 18, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Order denying compensability and temporary total disability. The appeal was timely filed by the petitioner and a response was filed by Century Aluminum of West Virginia, 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 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 relevant medical records and facts surrounding the instant claim by Mr. Click for compensability and temporary total disability for an injury Mr. Click asserts the injury was received in the course of and as a direct result of his employment with Century Aluminum of West Virginia, Inc. Mr. Click asserts the evidence in the record supports a finding of compensability for his left knee injury despite the similarity between the October 7, 2007 and October 2, 2008 MRI reports related to his left knee and the slight variations related to the facts surrounding his injury.

In its Order the Office of Judges opined Mr. Click failed to prove by a preponderance of the evidence that he received an injury to his left knee in the course of his employment. (December 19, 2009 Office of Judges Order, p. 8). In reaching its conclusion, it noted the Petitioner was not precluded from obtaining compensability and temporary total disability benefits due to his pre-existing knee injuries, however, it also expressed concern related to Mr. Click's conflicting recollections of the injury, the similar MRI findings of October 7, 2007 and October 2, 2008, and the absence of any findings of acute injury in the 2008 MRI report. *Id.* The Office of Judges, too, found no basis for compensability or temporary total benefits, 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 July 29, 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 and temporary total benefits is affirmed.

Affirmed.

ISSUED: July 21, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Menis E. Ketchum

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin