

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHARLOTTE YEAGER, Petitioner

November 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101063 (BOR Appeal No. 2044213)
(Claim No. 2007217638)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WESTMORELAND COAL COMPANY, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 9, 2010, in which the Board affirmed a March 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of dependent benefits for occupational pneumoconiosis. The appeal was timely filed by the petitioner and a response was filed by the Westmoreland Coal 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.

Ms. Yeager asserts she is entitled to dependent benefits due to her husband's death substantially resulting from occupational pneumoconiosis. Westmoreland Coal Company asserts the decedent suffered from numerous medical conditions at the time of death including, recurrent pneumonia due to chronic aspiration, cardiac infarction, diabetes and the medical evidence all of which significantly contributed to decedent's death and not the occupational pneumoconiosis.

The Office of Judges determined the relevant medical evidence does not support a finding Mrs. Yeager's husband's death was substantially contributed to, or caused, by his occupational pneumoconiosis. It noted the Occupational Pneumoconiosis Board, Drs. Kinder, Henry, and Lee, believed the decedent suffered from occupational pneumoconiosis, however, the Occupational Pneumoconiosis Board found the condition did not significantly contribute to decedent's death. (March 3, 2010, Office of Judges Order, p. 6). It held the autopsy report, limited to the lungs, was of questionable value in light of the history of heart problems. *Id.* It further noted Dr. Graziano's report was not supported by medical evidence and should not be afforded significant evidentiary weight in the absence of significant pulmonary impairment. *Id.* 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 August 9, 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 dependent benefits for occupational pneumoconiosis is affirmed.

Affirmed.

ISSUED: November 2, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh