

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MICHAEL P. ABRAM,
Claimant Below, Petitioner

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

vs.) No. 101086 (BOR Appeal No. 2044083)
(Claim No. 2009074279)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

PRITCHARD ELECTRIC COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 9, 2010, in which the Board affirmed an January 5, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's November 28, 2008 Order which found the claimant's injury non-compensable. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 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 Office of Judges found the claimant did not prove a causal relationship between the injury and his employment. Mr. Abram argues that his injury resulted and was worsened by the conditions of his employment. He presented statements from himself and co-workers relating to the employment conditions he is alleging caused his injury.

The Supreme Court of Appeals can reverse or modify a decision of the board only if the decision is in clear violation of a constitutional or statutory provision, based on an erroneous conclusion of law, or is based upon a misstatement or mischaracterization of the evidence. This Court cannot re-weigh the evidence considered by the Office of Judges.

The claimant has the burden of proving that he sustained an injury in the course of and resulting from his employment. *Emmel v. State Compensation Director*, 150 W.Va. 277, 145 S.E.2d 29 (1965). In its order affirming the Claims Administrator's denial of compensability, the Office of Judges noted that the preponderance of the evidence showed the claimant did not injure his finger in the course of and as a result of his employment. (January 5, 2010 Office of Judges Order, p. 12). The Office of Judges further noted the lack of persuasive evidence linking the injury to any specific occupational hazard. *Id.* The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision on 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 petitioner's request for compensability is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh