

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**Richard A. Jones,
Claimant Below, Petitioner**

**August 3, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**vs.) No. 101095 (BOR Appeal No. 2044165)
(Claim No. 2008027166)**

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

and

**Gassearch Drilling Services Corporation,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 10, 2010, in which the Board affirmed a February 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 26, 2008 decision denying the compensability of Mr. Jones's claim. 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.

In its Order, the Office of Judges held that Mr. Jones failed to provide reliable and persuasive evidence that he suffers from hearing loss caused by occupational hazardous noise exposure. Mr. Jones disputes this finding and points to the occupational hearing loss report and audiogram completed by Dr. Magnussen, which awarded him a 7% whole person impairment rating and did not identify a non-occupational cause of his hearing loss.

The Office of Judges found that the audiogram performed by Dr. Magnussen did not contain mandatory validity checks. (February 12, 2010 Office of Judges Order, p. 6). The Office of Judges also noted that Mr. Jones was the subject of another audiogram in 1999, performed by Ms. Tana Uhl, to investigate Mr. Jones's complaints of tinnitus. *Id.* It further noted that Mr. Jones's past medical history included two head injuries, both resulting in a loss of consciousness. *Id.* The Office of Judges specifically found the 2007 audiogram, the results of which accompanied Mr. Jones's benefits application, was unreliable, unpersuasive, and failed to establish the compensability of his claim. *Id.* at 7. The Board of Review reached the same reasoned conclusion in its Order of August 10, 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 to hold hearing loss as a compensable condition is affirmed.

Affirmed.

ISSUED: August 3, 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