

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DENNIS SHREWSBURY, Petitioner

November 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101155 (BOR Appeal No. 2044145)
(Claim No. 2004094493)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BODYWORKS, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 30, 2010, in which the Board affirmed February 17, 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 Bodyworks, 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, 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.

Mr. Shrewsbury asserts the evidence establishes he suffered a work-related vehicle accident and his injuries should be ruled compensable through his workers' compensation insurance. Bodyworks, Inc. asserts Mr. Shrewsbury was not engaged in work activities at the time of his accident and is not entitled to compensability for his injuries.

The Office of Judges considered the relevant evidence in determining the evidence establishes Mr. Shrewsbury is the owner of the vehicle driven at the time of the accident, Mr. Shrewsbury worked on building the vehicle in his free time, and the vehicle was being driven out of the garage at the time of the accident. (February 17, 2010, Office of Judges Order, p. 3). It further found the evidence failed to establish Mr. Shrewsbury was working on a customer vehicle at 9:00 p.m. when the accident occurred. *Id.*, p. 4. The Office of Judges, too, found no basis for awarding compensability 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 30, 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 Court affirms the Board of Review Order denying compensability.

Affirmed.

ISSUED: November 17, 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