

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHARLES P. BELCHER, Petitioner

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

vs.) No. 101162 (BOR Appeal No. 2044619)
(Claim No. 990031761)

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 19, 2010, in which the Board affirmed a May 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Belcher's petition for reopening. The appeal was timely filed by the petitioner and a response was filed by the Performance 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.

Mr. Belcher asserts his petition for reopening should be granted by this Court as his knee injury is progressive in nature and the applicable statute of limitations restarted in 2007 after an additional award of permanent partial disability benefits. Performance Coal Company asserts Mr. Belcher failed to file his petition for reopening within the applicable statute of limitations and the reopening was properly denied.

In its Order denying the petition for reopening the Office of Judges found the initial award of permanent partial disability occurred in 2000 and a subsequent award granted in 2007. (May 26, 2010, Office of Judges Order, p. 3). It held the Petitioner failed to file for reopening within the applicable time period after the initial award of permanent partial disability in 2000 and the request should be denied. *Id.* The Office of Judges, too, found no basis for granting Mr. Belcher's petition for reopening 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 19, 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 Mr. Belcher's request for reopening of this claim.

Affirmed.

ISSUED: November 17, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin disqualified.