

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

RAYMOND E. SPEIGHTS, Petitioner

November 10, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101173 (BOR Appeal No. 2044427)
(Claim No. 930036102)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CONSOLIDATION COAL CO., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board affirmed a March 25, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's September 8, 2009, Order denying the petitioner's application for permanent total disability benefits. The appeal was timely filed by the petitioner and a response was filed by Consolidation 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 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, in affirming the Claim Administrator's denial of permanent total disability benefits, noted that the petitioner failed to provide evidence in support of his protest to contradict the Claim Administrator's Order. Mr. Speights argues that the law in effect at the time of injury governs his claim for permanent total disability benefits and thus his application should be considered. Consolidation Coal Company argues that the petitioner

not only failed to file a timely application but also fails to meet the statutory threshold.

In its Order, the Office of Judges held the petitioner failed to file a timely application for permanent total disability benefits. (March 25, 2010, Office of Judges Order, p. 4). Under W. Va. Code § 23-4-16(a)(2) there is a five year time limit from the date of a permanent disability award to file an application for permanent total disability. The Office of Judges noted the statute is clear in what constitutes a timely filing and the petitioner failed to meet the requirement. *Id.* The Board of Review reached the same reasoned conclusions 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 August 19, 2010, Board of Review Order is affirmed.

Affirmed.

ISSUED: November 10, 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