

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FRANK G. MAZZIE, Petitioner

vs.) No. 101260 (BOR Appeal No. 2044202)
(Claim No. 2009062101)

FILED

November 8, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA DIVISION OF HIGHWAYS,
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 a February 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 2, 2008, Order, which rejected Mr. Mazzie's application for benefits. The appeal was timely filed by the petitioner, and the West Virginia Division of Highways filed a response. 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 parties' submissions 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 Board of Review affirmed the Office of Judge's Order, which denied Mr. Mazzie's application for benefits. Mr. Mazzie argues that his deposition testimony in which he explained how his work-related right ankle injury occurred in conjunction with his medical records preponderate in favor of compensability.

The Office of Judges, however, first pointed out that Mr. Mazzie sought treatment the day following his alleged injury, but he did not report a specific injury at that time. (Feb. 22,

2010, Office of Judges Order, p. 4.) Rather, Mr. Mazzie complained only of swollen and stiff joints in his hands, fingers, wrists, and ankles. *Id.* Furthermore, on September 16, 2008, only five days following his alleged work-related injury, Mr. Mazzie reported ankle and knee swelling for the prior two weeks. Because Mr. Mazzie's medical records do not substantiate his account of a work-related injury, the Office of Judges affirmed the claims administrator's rejection of Mr. Mazzie's claim. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its August 30, 2010, decision.

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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the rejection of Mr. Mazzie's claim is affirmed.

Affirmed.

ISSUED: November 8, 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