

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LARRY D. BUTCHER, Petitioner

February 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101372 (BOR Appeal No. 2044373)
(Claim No. 990033582)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
J.E.T. RESOURCES, LLC, Respondent

MEMORANDUM DECISION

Petitioner, Larry D. Butcher, by John C. Blair, his attorney, appeals the Board of Review order denying a remand to determine compensability for Mr. Butcher's hypertension and a right eye condition. The Office of Insurance Commissioner, by Jon H. Snyder, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 31, 2010, in which the Board affirmed an October 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Butcher's request for a remand of this matter to have Mr. Butcher's hypertension rated and a ruling on the compensability of a right eye condition. 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.

The Board of Review found Mr. Butcher failed to meet the requisite degree of impairment for an award of permanent total disability and that Mr. Butcher's hypertension was appropriately attributed to non-compensable causes. Mr. Butcher asserts his hypertension was previously recognized as a compensable component of his claim. Further, Mr. Butcher asserts his chronic pain resulting from the work-related accident causes an exacerbation of his hypertension. Mr. Butcher also argues a right eye condition, which occurred after the work-related accident, should be considered compensable and a ruling on the impairment for this condition made by the Claims Administrator. The Office of Insurance Commissioner responds the Board of Review properly attributed Mr. Butcher's hypertension solely to non-compensable conditions as Mr. Butcher suffers from several pre-disposing factors for hypertension: morbid obesity, diabetes mellitus, and a 35-year history of cigarette smoking.

The Office of Judges found "[t]here must be a finding by the Board that the claimant had a 50% or more whole body medical impairment or a 35% statutory disability in order to continue determination of permanent total disability." (March 29, 2010, Office of Judges Order, p. 18). In considering Mr. Butcher's request that he be granted the 20% impairment for hypertension, the Office of Judges further noted that the finding of compensability for a particular condition does not automatically guarantee a finding of permanent impairment. *Id.*, p. 19. The Office of Judges order goes on to state that, "this Adjudicator agrees with the Board's conclusions. Dr. Ranavaya also agreed with the Board's conclusions." *Id.* The Office of Judges held even if Mr. Butcher's hypertension was considered in determining permanent total disability, Mr. Butcher would still fail to meet the requisite threshold for an award of permanent total disability.

Pursuant to Mr. Butcher's request that his right eye condition be considered as a compensable component of his claim, in the order of the Office of Judges it was held that "it has not been found to be a compensable component of the claim and[,] therefore[,] it would be inappropriate for this Adjudicator to remand the claim to the Board to express impairment, if any, for a condition that has not been found to be a compensable component of the claim." *Id.* The Office of Judges, too, found no basis for disputing the Claims Administrator's findings or for granting Mr. Butcher's request for an award of permanent total disability benefits. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges decision of October 12, 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 affirming the denial of Mr. Butcher's request for a remand for rating of hypertension and compensability of the right eye condition is affirmed.

Affirmed.

ISSUED: February 24, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh