

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 17, 2012

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

BRUCE E. BENEDUM, Petitioner

**vs.) No. 101391 (BOR Appeal No. 2044534)
(Claim No. 2010098360)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MOSITES CONSTRUCTION COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Bruce E. Benedum, by Robert Weaver, his attorney, appeals the decision of the Board of Review. Mosites Construction Company, by James Heslep, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 13, 2010, in which the Board affirmed an April 16, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 22, 2009, decision denying the compensability of Mr. Benedum's claim. 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.

In its Order, the Office of Judges held that Mr. Benedum was not injured in the course of and as a result of his employment. Mr. Benedum disputes this finding and asserts that he was injured while performing a work task on July 9, 2009.

The Office of Judges found that on July 14, 2009, Mr. Benedum was diagnosed with lumbar sprain and degenerative joint disease, and that an August 12, 2009, MRI revealed degenerative lumbar spine changes. The Office of Judges then found that Mr. Benedum's lumbar spine and hip problems are due to degenerative changes and are unrelated to his occupation. The Board of Review reached the same reasoned conclusion in its decision of October 13, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum