

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

McELROY COAL COMPANY, Petitioner

vs.) No. 101411 (BOR Appeal No. 2044394)
(Claim No. 2009083787)

FILED

December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CHARLES J. NEECE, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 13, 2010, in which the Board affirmed an April 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's April 2, 2009, Order, which rejected Mr. Neece's claim. The Office of Judges held the claim compensable and granted temporary total disability benefits. The appeal was timely filed by the petitioner. 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 held Mr. Neece's claim compensable and granted him temporary total disability benefits. McElroy Coal Company ("McElroy") argues that the claims administrator's order, which rejected Mr. Neece's claim, should be reinstated because his injury, a torn meniscus, did not occur as a result of his employment. In support of its argument, McElroy notes that Mr. Neece's medical records indicate that he was walking on a normal surface at the time of his injury. The records further reveal that Mr. Neece suffers from arthritis in his knee. Thus, McElroy contends that Mr. Neece's injury occurred simply as a result of his own health condition.

The Office of Judges first noted that, although Mr. Neece's medical records state that he was walking on a "normal" surface at the time of his injury, Mr. Neece testified that the ground surface actually consists of uneven ballast material. (Apr. 7, 2010, Board of Review Order, p. 5.) Mr. Neece was exiting a coal mine via the mantrip after his shift was over when his injury occurred, an action "undoubtedly" required by McElroy. *Id.* Further, McElroy controlled the surface of the walkway to the mantrip. *Id.*

Moreover, in response to McElroy's argument that Mr. Neece's injury occurred as a result of his own health condition, which includes knee arthritis, the Office of Judges noted that Mr. Neece's medical records classify the injury as occupational in nature. *Id.* Mr. Neece's medical providers were aware of his arthritic knees and nonetheless determined that his torn meniscus was an occupational injury. *Id.* For these reasons, the Office of Judges reversed the claims administrator, held the claim compensable, and granted temporary total disability benefits. The Board of Review reached the same reasoned conclusion in its October 13, 2010, Order.

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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the holding of Mr. Neece's claim compensable and the granting of temporary total disability benefits is affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh