

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

BRUCE SALMONS, Petitioner

vs.) No. 101430 (BOR Appeal No. 2044682)
(Claim No. 2006210289)

FILED

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

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ROCKSPRING DEVELOPMENT, INC.,
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 a May 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 10, 2009, Order, which denied the addition of lumbar radiculopathy, ulnar tunnel syndrome, and carpal tunnel syndrome as compensable conditions. The appeal was timely filed by the petitioner, and Rockspring Development, Inc. 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 the addition of lumbar radiculopathy, ulnar tunnel syndrome, and carpal tunnel syndrome as compensable components. Mr. Salmons argues that two treating physicians, Drs. Rida Mazagri and Gregory Carico, requested that these conditions be added as compensable components. In response to the contention that no doctor has provided evidence of a causal connection between his compensable fall and the requested additional conditions, Mr. Salmons argues

that the fact that his physicians requested these components be added in the first place indicates a causal connection.

The Office of Judges first noted that his report of occupational injury listed only his neck and shoulders as the affected body parts. (May 28, 2010, Office of Judges Order, p. 5.) The first notation of lumbar pain was made about five months after his compensable injury, and even in spite of the notation, Mr. Salmons continued to be treated for only his cervical condition. *Id.* Mr. Salmons eventually underwent cervical spine surgery, and his physical therapy records from after the surgery make no mention of lumbar pain or lumbar radiculopathy. *Id.* Mr. Salmons eventually underwent a lumbar MRI, which revealed vast degenerative changes with stenosis. *Id.* For these reasons, the Office of Judges affirmed the denial of lumbar radiculopathy as a compensable component.

With respect to Mr. Salmons's carpal tunnel syndrome and ulnar tunnel syndrome, the Office of Judges found no evidence establishing a causal relationship between Mr. Salmons's compensable injury and these conditions. *Id.* at p. 6. There is no evidence that Mr. Salmons's compensable fall caused the development of carpal tunnel syndrome and ulnar tunnel syndrome. *Id.* Finally, Mr. Salmons has diabetes, which is a known risk factor in the development of carpal tunnel syndrome. *Id.* Thus, the Office of Judges affirmed the denial of carpal tunnel syndrome and ulnar tunnel syndrome as compensable components. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its October 13, 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 denial of lumbar radiculopathy, carpal tunnel syndrome, and ulnar tunnel syndrome as compensable components 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