

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BRUCE A BUZZARD, Petitioner

March 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101433 (BOR Appeal No. 2044676)
(Claim No. 990058974)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PRINCESS BEVERLY COAL COMPANY, Respondent

MEMORANDUM DECISION

Petitioner, Bruce A. Buzzard, by John H. Shumate, his attorney, appeals the Board of Review order denying reopening for additional permanent partial disability. The Office of Insurance Commissioner, by Gary M. Mazezka, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 26, 2010, in which the Board affirmed a June 14, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Order denying Mr. Buzzard's request for reopening for additional permanent partial disability. 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 considered Mr. Buzzard's request for reopening for additional permanent partial disability for his left shoulder injury and found the request was untimely filed. Mr. Buzzard asserts he never received a permanent partial disability award for the left shoulder injury, thus, the applicable statute of limitations has not been triggered. The Office of Insurance Commissioner asserts the request for reopening was untimely filed and the Board of Review properly denied Mr. Buzzard's request.

The Office of Judges ruled Mr. Buzzard's reopening request was untimely made. "The claimant requested a reopening for permanent partial disability consideration January 25, 2010, well after the five (5) year statute of limitations expired." It further held the plain meaning of the statute supports the argument that Mr. Buzzard's claim is time-barred. The Office of Judges, too, found no basis for granting Mr. Buzzard's reopening request, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 26, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Court affirms the Board of Review order denying Mr. Buzzard's reopening request for additional permanent partial disability.

Affirmed.

ISSUED: March 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin