

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**MARK W. CUMMINGS, Petitioner**

**March 22, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101467 (BOR Appeal No. 2044447)**  
**(Claim No. 2009083998)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**BECKLEY INSULATION CO., Respondent**

**MEMORANDUM DECISION**

Petitioner Mark W. Cummings, by Reginald Henry, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the claim for workers' compensation benefits. Beckley Insulation Company, by Robert Busse, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 12, 2010, in which the Board affirmed an April 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's March 25, 2009, denial of workers' compensation benefits. 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.

The Board of Review affirmed the holding that the petitioner failed to prove by the preponderance of the evidence that a personal injury was received in the course of employment and resulting from his employment. The petitioner disagrees and asserts that the record demonstrates that a compensable injury did occur if proper analysis is performed.

In affirming the Claims Administrator's denial of workers' compensation benefits, the Office of Judges noted several deficiencies in the record. The Office of Judges mentioned that physician's notes most contemporaneous with the incident mentioned six months of complaints involving the left shoulder and noted a denial of an injury. The Office of Judges ultimately found that the record as a whole did not demonstrate that the petitioner suffered from an occupational injury. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its 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 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 Board of Review Order is affirmed.

Affirmed.

**ISSUED: March 22, 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