

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHARLIE M. DANIELS JR., Petitioner

March 26, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101497 (BOR Appeal No. 2044473)
(Claim No. 2008033805)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CRAB ORCHARD MACARTHUR, PSD, Respondent

MEMORANDUM DECISION

Petitioner Charlie M. Daniels Jr., by Reginald Henry, his attorney, appeals the decision of the Board of Review. Crab Orchard MacArthur, PSD, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 25, 2010, in which the Board affirmed an April 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 20, 2008, decision denying the compensability of the 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, based upon the record, the claim is not compensable. Mr. Daniels disputes this finding and asserts that the record demonstrates that he sustained a compensable neck injury in the course of and resulting from his employment.

The Office of Judges pointed to W. Va. Code § 23-4-1 (2008), which provides that workers' compensation benefits shall be paid only if a worker receives an injury in the course of and resulting

from his employment. The Office of Judges found that Mr. Daniels did not seek medical treatment for three months following the June 23, 2008, injury and that his assertion that he immediately began feeling pain in his neck at the time of the injury is not substantiated by the evidence of record. The Office of Judges further found that even after waiting three months to seek treatment for his symptoms, Mr. Daniels did not mention his injury for over a month after the first visit to his treating physician. The Office of Judges also found that Mr. Daniels suffered from neck problems dating back to 2005. Finally, the Office of Judges found that Mr. Daniels's current symptoms are not the result of the June 23, 2008, injury. The Board of Review reached the same reasoned conclusion in its decision of October 25, 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 the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: March 26, 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