

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 14, 2012

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

DAVID E. SAYRE, Petitioner

**vs.) No. 11-0008 (BOR Appeal No. 2044699)
(Claim No. 2009056476)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KANAWHA VALLEY REGIONAL
TRANSPORTATION AUTHORITY, Respondent**

MEMORANDUM DECISION

Petitioner David E. Sayre, by Edwin Pancake, his attorney, appeals the decision of the Board of Review. The Kanawha Valley Regional Transportation Authority, by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 7, 2010, in which the Board affirmed a May 25, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 9, 2008, decision rejecting Mr. Sayre's application for 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.

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 Mr. Sayre did not sustain an injury in the course of and resulting from his employment. Mr. Sayre disputes this finding and asserts that he injured his lower back when he hit a deer while working as a bus driver.

In its Order, the Office of Judges noted that Mr. Sayre has a longstanding history of back injuries, and that he also suffers from degenerative changes. The Office of Judges found that video footage of the incident recorded on a camera mounted inside the bus, which shows Mr. Sayre holding his back for less than one minute, was inconclusive at best and did not show evidence of an injury. Finally, the Office of Judges found it suspect that Mr. Sayre waited approximately two months to seek medical treatment following the incident. The Board of Review reached the same reasoned conclusion in its decision of December 7, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 14, 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