

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 14, 2012

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

MARK A. LYNCH, Petitioner

**vs.) No. 11-0010 (BOR Appeal No. 2044729)
(Claim No. 2009071634)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ALCAN ROLLED PRODUCTS - RAVENSWOOD, LLC,
Respondent**

MEMORANDUM DECISION

Petitioner Mark A. Lynch, by Edwin Pancake, his attorney, appeals the decision of the Board of Review. Alcan Rolled Products, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 3, 2010, in which the Board affirmed a June 10, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 5, 2009, decision denying Mr. Lynch's application for an occupational hearing loss claim. 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. Lynch was not exposed to hazardous levels of occupational noise at any time between May 26, 2005, and December 11, 2008. Mr. Lynch disputes this finding and asserts that he was exposed to hazardous levels of occupational noise for a significant amount of time each day while performing his job duties as the safety chairman for Alcan Rolled Products.

The Office of Judges relied on the opinion of industrial hygienist Mr. Mike Merrifield, who concluded that Mr. Lynch was not exposed to hazardous levels of occupational noise from May 26, 2005, to December 11, 2008. The Office of Judges noted that Mr. Merrifield found that Mr. Lynch works primarily in an administrative office and that he is exposed to industrial noise one to two hours per day, during which time he wears hearing protection. Mr. Merrifield further found that, based on noise level samples taken in areas where Mr. Lynch would be exposed to occupational noise on a regular basis, the Employer is fully compliant with the standards for occupational noise exposure set by the Occupational Safety and Health Administration. The Board of Review reached the same reasoned conclusion in its decision of December 3, 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