

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 6, 2012

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

DANA P. BARRICK, Petitioner

**vs.) No. 11-0036 (BOR Appeal No. 2044686)
(Claim No. 2008031312)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BAYER CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner Dana P. Barrick, by John Skaggs, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the application for compensability of an occupational disease. Bayer Corporation, by Lucinda Fluharty, 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 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 1, 2008, decision denying compensability of a neurocognitive disorder. 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 this case, Mr. Barrick was employed as a chemical technician for twenty-six years. On February 5, 2008, Mr. Barrick filed an application for workers' compensation benefits for an occupational disease, based on the report by Dr. Bobby Miller dated January 22, 2008. Dr. Miller concluded that Mr. Barrick suffered from a mild neurocognitive disorder, secondary to his occupational exposure. The claims administrator, on April 1, 2008, denied the application for benefits as the report of Dr. Miller failed to establish a causal relationship between Mr. Barrick's

employment and his medical diagnosis. The Office of Judges affirmed the claims administrator's decision on May 27, 2010.

On appeal, Mr. Barrick argues that the report of Dr. Miller was reliable and clearly establishes that he suffers from an occupational disease secondary to his extensive occupational exposure to various chemicals. Further, he argues that under *Powell v. State Workmen's Compensation Comm'r.*, 166 W.Va. 327, 273 S.E.2d 832 (1980), he is entitled to a finding of compensability of the occupational disease. Bayer Corporation argues that Mr. Barrick failed to prove causation of the occupational disease through Dr. Miller's report. Further, Bayer notes that Mr. Barrick failed to provide the amount of evidence present in *Casdorph v. West Virginia Insurance Comm'r.*, 225 W.Va. 94, 690 S.E.2d 102 (2009). In *Casdorph*, the claimant provided an extensive record showing an association between the exposure and the alleged occupational disease. *Id.* at 99, 690 S.E.2d at 107.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of benefits for an occupational disease, held that the preponderance of the evidence failed to establish that Mr. Barrick incurred a mild neurocognitive disorder secondary to his occupational exposure. The Office of Judges noted that Mr. Barrick's medical evidence was limited to Dr. Miller's psychiatric evaluation. Ultimately, the Office of Judges found an insufficient credible evidentiary foundation to conclude that the continuous low level occupational exposure to chemicals caused the psychiatric condition. 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 6, 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