

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 6, 2012

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

MICHAEL D. TOLER, Petitioner

**vs.) No. 11-0040 (BOR Appeal No. 2044866)
(Claim No. 2010105164)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JUSTICE HIGHWALL MINING, Respondent**

MEMORANDUM DECISION

Petitioner Michael D. Toler, by Anne Wandling, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying his application for workers' compensation benefits. Justice Highwall Mining, by Jeffrey Brannon, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 22, 2010, in which the Board affirmed an August 2, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 15, 2009, Order denying 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 this case, Mr. Toler was working as a mechanic when the August 20, 2009, incident occurred. He asserts that he suffered an injury to his back and was diagnosed with a lumbosacral sprain. The claims administrator, on September 15, 2009, denied the application for benefits based on a finding that the alleged disability was not due to an occupational injury or disease.

The Office of Judges, on August 2, 2010, affirmed the claims administrator's September, 15, 2009, Order finding there was not an isolated fortuitous event causing an injury in the course of and resulting from the employment. Mr. Toler disagrees and asserts that the evidence establishes that he was injured while at work on August 20, 2009, and his inconsistent statements were not a proper basis for denying the application. Justice Highwall Mining argues that the objective medical evidence establishes that no new injury occurred on August 20, 2009, and that Mr. Toler had been receiving treatment for chronic low back pain prior to the alleged incident.

In reaching the conclusion that the application for workers' compensation benefits should be denied, the Office of Judges noted that Mr. Toler's statements regarding the current alleged injury and prior injuries were inconsistent. The Office of Judges also noted a prior low back injury in 1992. The Office of Judges found the evidence did not establish that there was an injury received in the course of and resulting from Mr. Toler's employment. The Board of Review reached the same reasoned conclusion in its decision of December 22, 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:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum