

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 27, 2012

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

RONALD SACRIPANTI, Petitioner

**vs.) No. 11-0096 (BOR Appeal No. 2044829)
(Claim No. 2009083703)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
EAGLE MANUFACTURING COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Ronald Sacripanti, by Patrick Maroney, his attorney, appeals the decision of the Board of Review. Eagle Manufacturing Company, by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 23, 2010, in which the Board affirmed a June 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 7, 2009, decision rejecting Mr. Sacripanti's request to hold the claim compensable. 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.

Mr. Sacripanti is employed as a die setter with Eagle Manufacturing Company. While at work, he was pushed into a four-foot-deep pit by a piece of machinery; he initially landed on his feet and then fell to his knees. There is a discrepancy concerning the date of the incident, which the record indicates was on either January 9, 2009, or January 13, 2009. On March 18, 2009, Mr. Sacripanti underwent a C5-6 and C6-7 discectomy and fusion to treat herniated cervical discs;

following this surgery, he has reported various symptoms such as leg cramps, dizziness, headaches, and shoulder pain.

On April 2, 2009, Dr. Short reviewed Mr. Sacripanti's medical record and recommended denying compensability of the claim. He found that the symptoms Mr. Sacripanti is currently experiencing, as well as the symptoms that led him to undergo a cervical discectomy, were caused by chronic degenerative changes. On January 11, 2010, Dr. Gerbo performed an independent medical evaluation and also found that Mr. Sacripanti's symptoms are due to degenerative changes.

In its Order affirming the claims administrator's decision, the Office of Judges held that Mr. Sacripanti's current condition is the result of preexisting medical conditions and not as a result of his employment. Mr. Sacripanti disputes this finding and asserts that the record demonstrates that his current symptoms are the result of an occupational injury. Eagle Manufacturing argues that Mr. Sacripanti failed to prove that he sustained a work-related injury.

In its Order, the Office of Judges relied heavily on the opinions of Dr. Short and Dr. Gerbo. Specifically, the Office of Judges found that the opinions of Dr. Short and Dr. Gerbo were more persuasive than the other medical evidence of record. It further found that the medical statements from Mr. Sacripanti's treating physicians were unpersuasive, and noted that the medical statements were not completed until several months after examining Mr. Sacripanti. The Board of Review reached the same reasoned conclusion in its decision of December 23, 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 27, 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