

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MIKE H. KANDIS, Petitioner

July 20, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0150 (BOR Appeal No. 2044832)
(Claim No. 2009086362)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
TROY GROUP, INC., Respondent

MEMORANDUM DECISION

Petitioner, Mike H. Kandis, by William C. Gallagher, his attorney, appeals the Board of Review Order denying compensability for left moderate carpal tunnel syndrome. Troy Group, Inc., by Lucinda Fluharty, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 22, 2010, in which the Board affirmed a July 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed and modified the claims administrator's denial of compensability for carpal tunnel syndrome. 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, response, 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.

The Board of Review held the evidence fails to establish Mr. Kandis's carpal tunnel syndrome is work-related and compensable. Mr. Kandis was employed by Troy Group, Inc. for approximately a year, during which time Mr. Kandis asserts he engaged in repetitive activities involving the use of hand drills, utility knives, a power drill, hammer, and lifting 40 to 50 pound bags of raw materials.

Mr. Kandis previously suffered a dislocated left elbow on October 1, 2001, during a non-occupational wrestling match. At the time of this injury, Mr. Kandis complained of decreased sensation in his left hand and wrist, minimal motion of the digits, and inability to extend the wrist. Mr. Kandis suffered another wrestling related injury to his left shoulder on February 3, 2009. When the pain related to this injury did not improve Mr. Kandis was referred by the Family Health Center for an EMG study. The EMG study on March 30, 2009, establishes Mr. Kandis has left moderate carpal tunnel syndrome, however, the report does not attribute Mr. Kandis's carpal tunnel syndrome to his employment with Troy Group. The claims administrator denied Mr. Kandis's claim based upon his failure to submit an Injured Worker's questionnaire.

The Office of Judges held Mr. Kandis's failure to complete the questionnaire is not a determining factor for compensability. In fact, the Office of Judges held "[i]n every carpal tunnel claim, there must be medical evidence that the claimant has carpal tunnel syndrome and that the carpal tunnel syndrome is due to a work related condition." The medical evidence does not establish Mr. Kandis's carpal tunnel syndrome is work-related. Mr. Kandis previously suffered a dislocated left elbow and, a later left shoulder injury while wrestling. As a result, the Office of Judges held there are other possible non-compensable reasons for Mr. Kandis's carpal tunnel syndrome and without any medical evidence establishing a causal connection with his employment, there is no basis for finding that the carpal tunnel syndrome is work-related and compensable. Thus, the Office of Judges held Mr. Kandis failed to establish his carpal tunnel syndrome is work-related and denied compensability for the injury. The Board of Review reached the same reasoned conclusion in its Order 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 Court affirms the Board of Review Order denying compensability for Mr. Kandis's left carpal tunnel syndrome.

Affirmed.

ISSUED: July 20, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating