

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MICHAEL T. SANDERS, Petitioner

August 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0263 (BOR Appeal No. 2044904)
(Claim No. 2009074917)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
SUPERIOR FILTER COMPANY, INC., Respondent**

MEMORANDUM DECISION

Petitioner Michael T. Sanders, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Superior Filter Company, by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 24, 2011, in which the Board affirmed an August 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 22, 2009, decision denying Mr. Sanders's request for 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.

Mr. Sanders was employed as a general laborer with Superior Filter Company. He alleges that he sustained a lower back injury on January 2, 2009, while moving a roll of cable, although the record reveals evidence of back problems prior to that date. On June 3, 2009, Dr. Alberico performed a left L5-S1 hemilaminotomy and discectomy to treat a herniated nucleus pulposus at the L5-S1 level.

In its Order affirming the January 22, 2009, claims administrator's decision, the Office of Judges held that the preponderance of the evidence fails to establish that Mr. Sanders sustained a compensable lower back injury on January 2, 2009. Mr. Sanders disputes this finding and asserts that the evidence of record demonstrates that he sustained a herniated disc in the course of and resulting from his employment.

The Office of Judges noted that although Mr. Sanders alleges that his symptoms are due to an injury that he sustained on January 2, 2009, the record indicates that he was receiving treatment for lower back pain as early as December 2, 2008. The Office of Judges further noted that when Mr. Sanders left work early on January 2, 2009, he failed to report to his supervisors that he had sustained any type of injury. Additionally, the Office of Judges noted that Mr. Sanders's medical records are unclear as to the exact circumstances surrounding his injury. The Board of Review reached the same reasoned conclusion in its decision of January 24, 2011.

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: August 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