

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 2, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

VINSON C. EPPERSON JR., Petitioner

**vs.) No. 11-0290 (BOR Appeal No. 2044978)
(Claim No. 2008005313)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
AMFIRE, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Vinson C. Epperson Jr., by Paige Flanigan, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Amfire, LLC, by Ann Rembrandt, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 20, 2011, in which the Board affirmed an August 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 18, 2008, decision granting Mr. Epperson no permanent partial disability award for occupational pneumoconiosis. 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. Epperson was employed as an underground coal miner with Amfire, LLC. He alleges that he developed occupational pneumoconiosis as a result of exposure to coal dust over a period of sixteen years. On January 3, 2008, the Occupational Pneumoconiosis Board found that there was "insufficient evidence of a parenchymal abnormality to establish a diagnosis of occupational pneumoconiosis." On June 5, 2008, Dr. Rasmussen examined Mr. Epperson and diagnosed him with clinical occupational pneumoconiosis, and noted that his forty year smoking habit contributed to his pulmonary impairment. Dr. Rasmussen found that Mr. Epperson suffers from a

20% impairment of pulmonary function. On January 7, 2009, Dr. Castle reviewed Mr. Epperson's medical records and concluded that he does not suffer from occupational pneumoconiosis, despite having sufficient exposure to coal dust for it to develop. On May 19, 2010, the Occupational Pneumoconiosis Board affirmed its conclusion that Mr. Epperson does not suffer from occupational pneumoconiosis, and noted Mr. Epperson's history of smoking and prior inflammatory disease.

In its Order affirming the February 18, 2008, claims administrator's decision, the Office of Judges held that Mr. Epperson is not entitled to a permanent partial disability award for occupational pneumoconiosis. Mr. Epperson disputes this finding and asserts, per the opinion of Dr. Rasmussen, that he is entitled to a 15-20% permanent partial disability award for occupational pneumoconiosis.

The Office of Judges found that the conclusions of the Occupational Pneumoconiosis Board were credible and reliable. The Office of Judges noted that the Occupational Pneumoconiosis Board found no radiologic evidence indicating that Mr. Epperson suffers from occupational pneumoconiosis. The Office of Judges further noted that the Occupational Pneumoconiosis Board found that although Mr. Epperson does not suffer from occupational pneumoconiosis, he does have a 10-15% pulmonary function impairment attributable to causes unrelated to his employment. The Board of review reached the same reasoned conclusion in its decision of January 20, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: October 2, 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