

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 13, 2012

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

DONNIE W. SHUMATE, Petitioner

vs.) No. 11-0491 (BOR Appeal No. 2044983)
(Claim No. 2008044614)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PHILLIPS MACHINE SERVICE, INC., Respondent**

MEMORANDUM DECISION

Petitioner Donnie W. Shumate, by John Skaggs, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Phillips Machine Service, Inc., by Ann Rembrandt, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 18, 2011, in which the Board affirmed an August 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 27, 2009, decision denying Mr. Shumate's request to add sinusitis and secondary reactive airway as compensable components. 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.

During the course of his employment with Phillips Machine Service, Mr. Shumate was exposed to various fumes and vapors. On June 10, 2008, the claim was held compensable for bronchitis/pneumonitis due to vapor exposure and toxic effects of caustic alkalis. Mr. Shumate seeks to add sinusitis and secondary reactive airway as compensable components. On October 16, 2009, the StreetSelect Grievance Board determined that any symptoms related to Mr. Shumate's occupational exposure would be covered by the diagnoses that have already been held compensable. The Grievance Board further noted that Mr. Shumate does not, and never has,

suffered from the conditions he seeks to add as compensable components, and that adding a diagnosis that does not exist to a claim is nonsensical.

In its Order affirming the October 27, 2009, claims administrator's decision, the Office of Judges held that Mr. Shumate is not entitled to the addition of the diagnoses of sinusitis and secondary reactive airway as compensable components of the claim. The Office of Judges took note of the limited nature of the record, and found that the claims administrator denied the request to add the additional components because Mr. Shumate does not suffer from those conditions, and even if he did, treatment for them would be covered under the conditions that have already been held compensable. The Board of Review reached the same reasoned conclusion in its decision of February 18, 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: December 13, 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