

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 1, 2013

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

LAWRENCE A. SLEBODNIK,
Claimant Below, Petitioner

vs.) No. 11-0542 (BOR Appeal No. 2045055)
(Claim No. 2006210525)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

WHEELING-PITTSBURGH STEEL CORP.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Lawrence A. Slebodnik, by William C. Gallagher, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Wheeling-Pittsburgh Steel Corporation, by Lucinda L. Fluharty, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 24, 2011, in which the Board affirmed a September 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Slebodnik's request to add four arthritic conditions to his compensable claim. 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 Rules of Appellate Procedure.

Mr. Slebodnik worked as a millwright for thirty-six years. During that time, he developed right carpal tunnel syndrome, which the Board of Review held to be compensable in April of 2008. After being granted compensability, Mr. Slebodnik underwent both right and left carpal tunnel release surgery, though only his right carpal tunnel syndrome was compensable.

After the surgeries, between July of 2008 and January of 2009, Dr. Ditano reported that Mr. Slebodnik's arthritic condition was work-related and requested authorization for surgery. On January 30, 2009, the claims administrator denied compensability for the arthritic conditions at issue here: right wrist tenosynovitis, osteoarthritis right wrist, neuropathy, and synovitis. Dr. Ira J. Unger, on September 7, 2009, found that Mr. Slebodnik had reached maximal medical improvement for right carpal tunnel syndrome, and that the arthritic conditions were unrelated to the compensable injury. In both August of 2009 and March of 2010, Dr. Langa reviewed more recent medical reports, and confirmed her previous conclusions, in addenda to the independent medical evaluation of April 10, 2007, that Mr. Slebodnik's carpal tunnel syndrome was not work related. The Office of Judges affirmed the claims administrator's denial, based on the reports of Drs. Unger and Langa, as well as the fact that only the right carpal tunnel syndrome is compensable, and Mr. Slebodnik has the arthritic conditions in both hands.

On appeal, Mr. Slebodnik argues that because no x-rays were submitted of his arm and wrist before he developed carpal tunnel syndrome, it could not be determined whether carpal tunnel syndrome caused the arthritic conditions at issue here, and therefore there is insufficient proof that the arthritic conditions are degenerative or due to causes other than a work-related injury. The Office of Judges and Board of Review determined, by a preponderance of the evidence available, that Mr. Slebodnik's arthritic conditions were not caused by work.

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: February 1, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum