

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**NYOKA RICHARDS, widow of
WALLACE RICHARDS (deceased),
Claimant Below, Petitioner**

FILED
June 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 11-1052 (BOR Appeal No. 2045464)
(Claim No. 890069948)**

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

and

**LINDY COAL,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Nyoka Richards, widow of Wallace Richards, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Mary Rich Maloy, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 14, 2011, in which the Board affirmed a December 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 18, 2009, denial of dependent benefits based on Mr. Richards's death. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Wallace Richards worked for Lindy Coal for over twenty years. During his lifetime he was exposed to the hazards of occupational pneumoconiosis and received a 20% permanent partial disability award as a result of his exposure. On August 18, 2009, Mr. Richards died. No autopsy was performed but the death certificate attributed his death to lung cancer resulting from occupational pneumoconiosis. Mrs. Richards applied for dependent benefits based on her husband's occupational pneumoconiosis but was denied by the claims administrator on June 18, 2009. The Occupational Pneumoconiosis Board conducted a hearing on Mrs. Richards's claim on November 3, 2009, and determined, based on the testimony of Dr. Kinder, who examined the available medical records, that there was insufficient evidence to determine that occupational pneumoconiosis materially contributed to Mr. Richards's death. Dr. Kinder opined that Mr. Richards died from lung cancer but did not find medical evidence to link his lung cancer to his occupational pneumoconiosis. On December 9, 2010, based on the findings of the Occupational Pneumoconiosis Board the Office of Judges found, by a preponderance of the evidence, that Mrs. Richards was not entitled to dependent benefits. The Board of Review, on June 14, 2011, affirmed the Order of the Office of Judges, leading to this appeal.

In cases where a decedent had contracted occupational pneumoconiosis and then died, the claims administrator is required to provide dependent benefits to the decedent's widow, under West Virginia Code § 23-4-10(b)(1) (2010), in an amount equal to the amount that would have been paid under an award of total disability, if the claimant can show that the occupational pneumoconiosis contributed in any material degree to the decedent's death.

Although it is clear from Mr. Richards's prior permanent partial disability awards that he had contracted occupational pneumoconiosis, the Office of Judges found that Mrs. Richards's claim for dependent benefits cannot be established, because there is no medical evidence in this case that demonstrates that the pneumoconiosis contributed in any material way to Mr. Richards's death. The Occupational Pneumoconiosis Board could not find any evidence to link Mr. Richards's compensable condition to his death.

The Board of Review did not err in affirming the December 9, 2010, Order of the Office of Judges because Mrs. Richards's claim for dependent benefits does not meet the standard set out in *Bradford v. Workers' Comp. Comm'r*, 185 W. Va. 434, 442, 408 S.E.2d 13, 21 (W. Va. 1991).

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: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II