

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**COLUMBIA WEST VIRGINIA CORPORATION,
Employer Below, Petitioner**

vs.) No. 11-1213 (BOR Appeal No. 2045609)
(Claim No. 2008029844)

**TERRY L. BROWN,
Claimant Below, Respondent**

FILED

May 16, 2013

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

MEMORANDUM DECISION

Petitioner Columbia West Virginia Corporation, by Julia R. Callaghan, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Terry L. Brown, by Reginald D. Henry, his attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 25, 2011, in which the Board affirmed a January 19, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 12, 2008, order. 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. Terry L. Brown was working as a mechanic in a pulpwood processing area for Columbia West Virginia Corporation when he developed symptoms of shortness of breath and difficulty breathing. Mr. Brown sought diagnosis and treatment for his condition before filing a workers' compensation claim on February 4, 2008, for restrictive lung disease.

On April 24, 2007, Mr. Brown was evaluated by Dr. Steven Koenig, who noted that Mr. Brown performed peak flow evaluations while he was away from his workplace, but not while at the workplace. Dr. Koenig diagnosed Mr. Brown with possible work-related asthma. Mr. Brown's treating physician, Dr. Jessica Murphy, eventually diagnosed him with restrictive lung disease that worsens when he is around exposure at work.

The employer argues that the claimant's appeal of the claims administrator's order denying the compensability of his claim is statutorily barred. However, the Office of Judges in an order dated January 15, 2010, found "it appears claimant only received the notice [of denial] on October 9, 2009," and granted the claimant a late filing of a protest to the March 12, 2008, order rejecting the claim.

"Once a prima facie claim is established by the claimant and the employer fails to offer medical evidence to refute the medical causation, refusal of the claim for lack of medical causation is reversible error as it is based on pure conjecture." Hoult v. Workers' Compensation Commissioner, 181 W.Va. 551, 383 S.E. 2d 516 (1989). The Office of Judges noted that the employer provided no other explanation for Mr. Brown's pulmonary condition. The Office of Judges found that Mr. Brown had established a prima facie case supporting the compensability of his claim and that the employer failed to offer medical evidence refuting compensability of the claim. The Office of Judges held that the preponderance of the evidence supports a finding that Mr. Brown developed a restrictive pulmonary disease in the course of and as a result of his employment. The Office of Judges reversed the claims administrator's order denying compensability. The Board of Review came to the same reasoned conclusion. We agree that Mr. Brown has established a prima facie case supporting the compensability of his restrictive lung disease.

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: May 16, 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