

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 14, 2013

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

BRUCE A. BUZZARD,
Claimant Below, Petitioner

vs.) **No. 11-1594** (BOR Appeal No. 2045891)
(Claim No. 2010131208)

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

and

PRINCESS BEVERLY COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Bruce A. Buzzard, by John H. Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Gary Mazezka, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated October 28, 2011, in which the Board reversed an April 15, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's April 22, 2010, decision rejecting the claim for bilateral carpal tunnel syndrome. 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. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Buzzard worked for the Princess Beverly Coal Company. On April 22, 2010, the claims administrator denied Mr. Buzzard's claim for workers' compensation benefits for bilateral carpal tunnel syndrome. The Office of Judges reversed the claims administrator's Order and held the claim compensable for bilateral carpal tunnel syndrome. The Board of Review reversed the Office of Judges' Order, and held that the preponderance of the evidence established that the claim was not timely filed.

On appeal, Mr. Buzzard disagrees and asserts that his application for bilateral carpal tunnel syndrome was timely filed within three years after his occupational disease was made known to him by a physician or which he should have known, as evidenced by the relevant, credible, material, and reliable medical evidence. The West Virginia Office of Insurance Commissioner maintains that the application was not timely filed, as indicated by an EMG, nerve conduction study, physician's evaluations, a functional capacity evaluation, and an application for permanent total disability benefits all mentioning carpal tunnel syndrome prior to September 4, 2004.

The Office of Judges held that the preponderance of the evidence established that Mr. Buzzard incurred bilateral carpal tunnel syndrome in the course of and resulting from his employment. It also held that his application for workers' compensation benefits for bilateral carpal tunnel syndrome was timely filed, as Mr. Buzzard filed for benefits within three years of being advised of the condition. The Office of Judges noted that Mr. Buzzard was informed of bilateral carpal tunnel syndrome resulting from his job duties in February of 2010. The Office of Judges concluded that the evidence of left carpal tunnel syndrome in 2001 resulting from a previous work-related injury was insufficient to establish that Mr. Buzzard had constructive knowledge of bilateral carpal tunnel syndrome resulting from the repetitive nature of his job duties. We agree with the reasoning and conclusions of the Office of Judges.

For the foregoing reasons, we find that the decision of the Board of Review is based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is reversed and the Office of Judges' April 15, 2011, Order is reinstated.

Reversed and Remanded.

ISSUED: March 14, 2013

CONCURRED IN BY:

Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis