

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
March 10, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WILLIAM A. CHRISTIAN,
Claimant Below, Petitioner

vs.) No. 12-0884 (BOR Appeal No. 2046824)
(Claim No. 2011036939)

WEST VIRGINIA DEPARTMENT OF
HEALTH & HUMAN SERVICES,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner William A. Christian, by Anne L. Wandling, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Department of Health and Human Services, by H. Dill Battle III and Julianne E. Thomas, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 29, 2012, in which the Board affirmed a January 13, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 23, 2011, decision which rejected the claim. 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. Christian is a registered nurse and a health facility supervisor. He alleges he was injured in the course of his employment on March 16, 2011, when he lifted a stack of approximately twenty files, twisted to the left, and felt a pop in his lower back. He then experienced pain in his lower back that radiated into his left leg. He did not seek medical

attention following this injury. Instead, he decided to treat himself with heat and rest. He also did not file a workers' compensation claim at that time. He did however fill out an incident report for his employer. During a deposition, Mr. Christian was unable to remember the size or weight of the stack of files that he alleges caused his injury in March of 2011. On May 6, 2011, Mr. Christian was at home when he set down a box of cereal and felt the pain in his back worsen. He decided to seek medical treatment at that time.

Mr. Christian filled out at least two reports of injury. Those reports were inconsistent regarding where the accident occurred. One report indicated it happened in Milton, and the other indicated it happened in Huntington. In his deposition, he testified that he incorrectly put Huntington and then corrected the mistake. Mr. Christian also testified that he had previously sustained injuries to his lower back. One injury occurred in 1987, and the other happened in September of 2010. He did not file a claim for the September injury.

Mr. Christian has a history of degenerative changes in his back. X-rays taken on December 20, 2009, following a motor vehicle accident, show that he has L5-S1 disc space narrowing secondary to chronic degenerative disc changes. Mr. Christian filed a workers' compensation claim for the March 16, 2011, injury in May of 2011. In the physician's section of that report, it notes that the injury aggravated the pre-existing back injuries. An MRI taken on May 17, 2011, showed multi-level degenerative disc disease and a protrusion at L4-L5. It also noted a small disc protrusion in combination with osteophytes at L5-S1. The claims administrator rejected the claim on May 23, 2011.

The Office of Judges affirmed the decision of the claims administrator in its January 13, 2012, Order. The Office of Judges noted that Mr. Christian's July 25, 2011, report of injury listed the location of the incident as Huntington. Mr. Christian testified in his deposition that the injury occurred in Milton, and that he contacted his employer to correct the mistake. The Office of Judges found that he could not remember several details regarding the alleged injury, including the size and weight of the stack of files. Mr. Christian acknowledged in his deposition that he exacerbated the injury at home in May of 2011. The Office of Judges concluded that the incident in May of 2011 is what prompted him to seek medical treatment. Between the injury in March of 2011, and the exacerbation at home in May of 2011, Mr. Christian did not seek medical attention. The Office of Judges noted that he sustained two previous back injuries in 1987 and 2010. The Office of Judges ultimately held that Mr. Christian failed to meet the burden of proof to establish that he was injured in the course of his employment.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its June 29, 2012, decision. This Court agrees with the reasoning and conclusions of the Board of Review. Mr. Christian alleges that he was injured in the course of his employment in March of 2011, but he did not seek medical attention until he was injured at home in May of 2011. He cannot remember basic details about his alleged injury, including the height and weight of the stack of files he was lifting. He has also been inconsistent regarding the location that the injury took place. The Board of Review was correct in its determination that Mr. Christian has failed to meet the burden of proof to establish that he sustained an injury in the course of his employment.

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: March 10, 2014

CONCURRED IN BY:

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