

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
March 20, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**MADALENE CLINE, WIDOW OF
HAROLD E. CLINE,
Claimant Below, Petitioner**

vs.) No. 12-0979 (BOR Appeal No. 2046876)
(Claim No. 2009067302)

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

and

**MARCUS COAL COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Madalene Cline, widow of Harold Cline, by Robert M. Williams, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jay W. Craig, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 27, 2012, in which the Board affirmed a January 27, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 16, 2009, decision denying Mrs. Cline's request for dependent's benefits in connection with her husband'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. Cline worked as a coal miner for Marcus Coal Company for over thirty years. During the course of his employment, Mr. Cline was exposed to the hazards of breathing coal dust and filed a claim for workers' compensation benefits for occupational pneumoconiosis. His claim was held compensable, and he was granted a 25% permanent partial disability award for occupational pneumoconiosis. On August 11, 2008, Mr. Cline died. His death certificate listed cardiopulmonary arrest, occupational pneumoconiosis, lung cancer, and colon cancer as the causes of death. Mrs. Cline then filed an application for dependent's benefits. The Occupational Pneumoconiosis Board considered the records in the case but found that occupational pneumoconiosis was not a material contributing factor in Mr. Cline's death. On October 16, 2009, the claims administrator denied Mrs. Cline's application for dependent's benefits. Donald L. Rasmussen, M.D., then reviewed the records in the case. He found that Mr. Cline died suddenly and that occupational pneumoconiosis was a potential aggravating factor in his sudden death. Gregory J. Fino, M.D., also reviewed the records in the case. But he found that Mr. Cline died as a result of a severe coronary artery disease and there was no evidence that his occupational pneumoconiosis contributed to his sudden cardiac disease.

The Occupational Pneumoconiosis Board then testified in a hearing before the Office of Judges. It stated that Mr. Cline would have died as he did and when he did regardless of his occupational pneumoconiosis. The Occupational Pneumoconiosis Board found that Mr. Cline had metastatic lung cancer which caused a decline in his overall health and culminated in a cardiac arrhythmia. The Occupational Pneumoconiosis Board found that occupational pneumoconiosis did not play a role in Mr. Cline's lung cancer and did not prevent him from receiving treatment. On January 27, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on July 27, 2012, leading Mrs. Cline to appeal.

The Office of Judges concluded that the Occupational Pneumoconiosis Board was correct to find that occupational pneumoconiosis did not cause nor was a material contributing factor in Mr. Cline's death. The Office of Judges found that Mr. Cline had metastatic lung cancer which caused a cardiac arrhythmia or sudden cardiac death. The Office of Judges found that Mr. Cline's cancer was caused by an extensive history of cigarette smoking rather than occupational pneumoconiosis. It determined that occupational pneumoconiosis did not make it any less likely that Mr. Cline would survive a cardiac arrhythmia. The Office of Judges found that Mr. Cline's occupational dust exposure did not affect how or when he died. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mrs. Cline had not presented sufficient evidence to show that she is entitled to dependent's benefits from her husband's death. Mrs. Cline has not shown that occupational pneumoconiosis contributed in any material degree to her husband's death. *Bradford v. Workers' Comp. Comm'r*, 185 W.Va. 434, 442, 408 S.E.2d 13, 21 (1991). The evidence in the record shows that Mr. Cline had cancer in his lungs from cigarette smoking which caused a cardiac

arrhythmia. The evidence shows that Mr. Cline had occupational pneumoconiosis, but the Occupational Pneumoconiosis Board found the disease did not make it less likely that he would survive a cardiac arrhythmia. The evidence in the record is consistent with the Occupational Pneumoconiosis Board's finding and the Office of Judges was within its discretion in relying on the Occupational Pneumoconiosis Board's opinion.

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 20, 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