

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
June 27, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MICHAEL DAVIS,
Claimant Below, Petitioner

vs.) No. 13-0306 (BOR Appeal No. 2047469)
(Claim No. 2011009683)

PEGASUS INTERNATIONAL ENTERPRISE, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Michael Davis, by Gregory Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pegasus International Enterprise, Inc., by James Harvey, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 27, 2013, in which the Board affirmed a July 20, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 15, 2010, decision rejecting Mr. Davis's claim for workers' compensation benefits. 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. Davis alleges that he sustained a labral tear in his left shoulder while making pizzas in the course of his employment sometime between January 1, 2010, and July 15, 2010. On July 16, 2010, Steven O'Saile, D.O., performed a left shoulder arthroscopy and repaired the labral tear. Mr. Davis filed an application for workers' compensation benefits in August of 2010. The claims administrator rejected the claim on November 15, 2010, citing insufficient medical evidence and a lack of an apparent physical injury.

On April 19, 2012, Dr. O'Saile testified in a deposition that he surgically repaired Mr. Davis's labral tear in July of 2010, but testified that he could not determine when the tear occurred, and indicated that it may have occurred years earlier. He further testified that Mr. Davis never reported any information indicative of when the tear may have occurred and never reported sustaining a specific injury. Dr. O'Saile then testified that any type of lifting or repetitive activity could be responsible for the torn labrum in Mr. Davis's left shoulder.

In its Order affirming the claims administrator's November 15, 2010, decision, the Office of Judges held that there is insufficient medical evidence contained in the record to support a finding of compensability. Mr. Davis disputes this finding and asserts that the evidence of record clearly shows that he sustained a labral tear in his left shoulder in the course of his employment.

The Office of Judges found that the evidence of record demonstrates that Mr. Davis has experienced chronic pain in both shoulders. The Office of Judges further found that Dr. O'Saile, whose medical opinion is the only one of record addressing the issue in the instant claim, was unable to identify the cause of Mr. Davis's labral tear. The Office of Judges then concluded that the medical evidence of record does not support a finding that Mr. Davis was injured in the course of and resulting from his employment. The Board of Review reached the same reasoned conclusions in its decision of February 27, 2013. We agree with the reasoning and conclusions of the Board of Review.

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 27, 2014

CONCURRED IN BY:

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

DISSENTING:

Justice Menis E. Ketchum