

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CONSTELLIUM ROLLED PRODUCTS,
Employer Below, Petitioner

vs.) No. 19-0023 (BOR Appeal No. 2053140)
(Claim No. 2017023510)

WILLIAM E. LEONARD,
Claimant Below, Respondent

FILED

November 15, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Constellium Rolled Products, by Counsel Alyssa A. Sloan, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). William E. Leonard, by Counsel Edwin H. Pancake, filed a timely response.

The issue on appeal is compensability. The claims administrator rejected the claim on May 16, 2017. The Office of Judges reversed the decision in its July 5, 2018, Order and held the claim compensable for diabetic ulcer and left foot cellulitis. The Order was affirmed by the Board of Review on December 21, 2018.

The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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. Leonard, a casting operator, alleges that he developed a diabetic ulcer and cellulitis in the course of and resulting from his employment. The March 31, 2017, Employees' and Physicians' Report of Injury indicates Mr. Leonard was injured on January 17, 2017, when his boot rubbed his foot, causing a blister that subsequently got infected and caused cellulitis. The physician's section listed the diagnosis as diabetic foot ulcer and stated that the condition is non-occupational. It also stated that the preexisting disease of diabetic foot ulcers was aggravated.

Treatment notes from Activate Healthcare on March 31, 2017, indicate Mr. Leonard reported a chronic problem with left foot blisters. He stated that he has a significant history of foot

blisters that take three to four months to heal. It was noted that he is a diabetic who is noncompliant with his medication. The diagnoses were diabetes with foot ulcer, cellulitis of the left lower limb, ketonuria, and glycosuria. Mr. Leonard was transferred to Pleasant Valley Hospital that day where it was noted that he had developed a left foot ulcer a month prior. Mr. Leonard was admitted to the hospital for cellulitis. A left foot MRI showed possible osteomyelitis and cellulitis. On April 3, 2017, Mr. Leonard underwent surgical debridement. He was discharged on April 8, 2017, with the diagnoses of Methicillin resistant Staph Aureus osteomyelitis with cellulitis of the left foot, type II diabetes, and hypertensive cardiovascular disease.

Mr. Leonard sought treatment from Robert Holley, M.D., on May 23, 2017, and the treatment note indicates he diagnosed hypertensive cardiovascular disease, anemia, uncontrolled type II diabetes, elevated lipids, and left foot Methicillin resistant Staph Aureus. On September 12, 2017, Dr. Holley diagnosed hypertensive cardiovascular disease, uncontrolled type II diabetes with neuropathy, elevated lipids, and left lower extremity peripheral artery disease.

Mr. Leonard testified in a deposition on August 22, 2017, that the personal protective equipment boots he was required to wear at work gave him foot blisters. He was given the choice of two different boots to wear at work but both cause blisters. Outside of work he only wears tennis shoes, and they never cause blisters. Mr. Leonard stated that his work boots caused a blister to develop on the outside of his left foot, which then got infected. He denied any similar problems in the past. Mr. Leonard stated that he did not file an incident report until he developed cellulitis on March 31, 2017, because he thought the blister would heal on its own. Mr. Leonard explained that he received his work boots from the store room at the plant where he worked. He also testified that he had similar problems with right foot blisters three years prior and developed cellulitis at that time as well.

In a January 13, 2018, affidavit, Charlie Murray stated that it is his job to provide boots to employees. He stated that there is an exemption to wearing the boots through a doctor's excuse. Mr. Leonard was given his boots on August 31, 2016, and since that time, he reported to the operations manager that the boots were uncomfortable. Mr. Leonard was advised to obtain an exemption through his physician but failed to do so.

The claims administrator rejected the claim on May 16, 2017. The Office of Judges reversed the decision and held the claim compensable for diabetic ulcer and left foot cellulitis in its July 5, 2018, Order. It found that there is no reason in the record, other than Mr. Leonard's work boots rubbing, for the blister to have developed on his left foot. Mr. Leonard testified that he wears tennis shoes outside of work, and they never cause blisters. He specifically remembered his work boot rubbing on his left foot where the ulcer developed. The Office of Judges held that an isolated fortuitous event occurred from Mr. Leonard wearing his work boot on or around January 17, 2017. It was noted that he submitted a prior decision by this Court, *Moore v. State Workman's Compensation Commissioner*, 118 W. Va. 578, 191 S.E. 292 (1937), in which we held a claim compensable when a man developed a blister on his leg. The claimant in that case was required to wear rubber boots while digging in a ditch. This Court held that because the boots were necessary for the claimant's job, the claim was compensable. In the case at issue, the Office of Judges found that Mr. Leonard was required to wear the work boots by his employer. Though he has diabetes,

he developed a left foot ulcer from his work boot rubbing his foot. The blister became infected and developed into cellulitis, as noted in multiple medical records. Though the report of injury listed the condition as non-occupational, the Office of Judges determined that it was a compensable injury. Mr. Leonard also submitted a prior Office of Judges Order in which he filed a claim for a foot abscess and cellulitis. The Office of Judges held that claim compensable on March 31, 2014, finding that Mr. Leonard's new work boot caused him to develop a blister 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 on December 21, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Pursuant to West Virginia Code § 23-4-1 (2008), employees who receive injuries in the course of and as a result of their covered employment are entitled to benefits. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *Barnett v. State Workmen's Compensation Commissioner*, 153 W.Va. 796, 172 S.E.2d 698 (1970). Mr. Leonard has shown that he was required to wear work boots in the course of his employment. He also showed by a preponderance of the evidence that wearing said boots caused a blister to develop on his left foot.

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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board of Review's findings, reasoning and conclusions, there is insufficient support to sustain the decision. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 15, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Margaret L. Workman
Justice Tim Armstead
Justice John A. Hutchison

DISSENTING:

Justice Evan H. Jenkins