

DO NOT REMOVE  
FROM FILE

FILE COPY



In the  
SUPREME COURT OF APPEALS OF WEST VIRGINIA  
Charleston, West Virginia

RAMACO RESOURCES, INC.,

Petitioner,

vs.

Supreme Court No.: 19-1163  
Appeal No.: 2054430  
Claim No. 2018024130  
Order Date: November 22, 2019

CHARLES ROLLINS,

Respondent.

---

BRIEF ON BEHALF OF RESPONDENT  
CHARLES ROLLINS

---

Edwin H. Pancake, Esquire  
State Bar No. 5767  
Maroney, Williams, Weaver & Pancake, PLLC  
PO Box 3709  
Charleston, WV 25337  
304-346-9629  
[epancake@mwwplaw.com](mailto:epancake@mwwplaw.com)

Counsel for Respondent

January 14, 2020

RESPONSE BRIEF

TYPE OF APPEAL

This claim comes before the Supreme Court of Appeals upon the petitioner, Ramaco Resources, Inc's, Petition for Appeal from the Workers' Compensation Board of Review Order dated November 22, 2019, which upheld the July 1, 2019, decision of the Administrative Law Judge which had reversed the carrier's Order dated May 3, 2018, which had rejected the claimant's application for workers' compensation benefits and, instead, held the claim compensable for the right wrist fracture. The respondent/claimant, Charles Rollins, respectfully asserts that the decision of the Workers' Compensation Board of Review was correct under the relevant facts and pertinent law, and therefore contains no reversible error.

STATEMENT OF THE CASE

The respondent/claimant, Charles Rollins, was employed as a diesel mechanic for the employer on April 20, 2018, when he fractured his right wrist in the course of his employment as he broke loose a bolt on a bracket. To do this, he was using a long-handled ratchet with an extension socket, and when the bolt snapped loose, the ratchet kicked back and his wrist "popped."

Mr. Rollins immediately knew he had injured his wrist and reported the incident to his employer and sought medical treatment. After x-rays and examination, he was diagnosed with a fracture of the right wrist.

The respondent file his application for workers' compensation benefits and, by order dated May 3, 2018, the Administrator rejected the claim on the basis of an opinion by Dr. Mukkamala who felt that the injury was not a new injury but in fact a prior wrist fracture that had not completely healed. Mr. Rollins protested this order.

In support of his protest the claimant tendered numerous medical records and obtained testimony of the claimant and his treating physician, Dr. McCleary. Dr. McCleary

had treated the claimant for a prior right wrist fracture which he had suffered in January 2018 and is a Board Certified orthopedic surgeon.

Dr. McCleary provided all of the treatment for the claimant's compensable injury, as well as for his prior right wrist fracture which had occurred more than three months before the instant injury. Following the prior fracture from January, 2018, Dr. McCleary had performed surgery and, ultimately, cleared the claimant to return to work in his job as a deiseal mechanic without restrictions. Mr. Rollins actually returned to work for his employer on April 6, 2018 and worked without any problems with his right wrist before fracturing it again on April 20, 2018.

In rejecting the claim, the Administrator relied upon a report of Dr. Mukkamala dated May 3, 2018. Dr. Mukkamala opined that the claimant's non-compensable injury from January 5, 2018, had not healed and there was no evidence of any new fracture. The Administrator then relied upon this opinion in rejecting the claim.

Of the medical evidence tendered by the parties, the most accurate and pertinent evidence are the records of Dr. McCleary and the transcript of his deposition which was taken on November 5, 2018. Dr. McCleary's testimony confirms that the prior injury had healed, and that the claimant had been returned to work without any restrictions by him. Dr. McCleary is the only orthopedic surgeon to opine on this matter and, as a treating physician, his opinion is entitled to the greatest weight since it is clearly supported by the ongoing records of his treatment.

Unwilling to simply rely on Dr. Mukkamala's opinion, the employer also obtained the services of Drs. Stoll and Luchs in hopes of supporting the rejection of the claim. Dr. Stoll reviewed the records provided to him by the employer and likewise subjectively opined that the claimant's January 5, 2018, fracture of the right wrist had not healed and, therefore, there was no new injury with relation to the incident of April 20, 2018.

As for Dr. Luchs, he is a radiologist who was asked to perform a "age of injury analysis" and only makes a finding that the claimant did suffer a fracture three months and fifteen days

prior to the injury. His ultimate finding was “Therefore this fracture pre-dates the patient’s injury on April 20, 2018.” The medical records and testimony certainly confirm that the claimant did, in fact, have a prior fracture to his right wrist on January 5, 2018, as well as the new subsequent fracture which he suffered on April 20, 2018. Dr. Luchs’ report adds nothing particularly relevant (or reliable) to the evidence.

The fact that the claimant may have suffered a prior fracture to the same body part does not now immunize the employer from responsibility in this claim. All that matters is the fact that the claimant was performing his work when his new injury occurred. Whether or not this was a re-injury of a non-occupational fracture, or a brand-new injury, is not relevant to the compensability of the claim. It is clear that, but for the mechanic activities undertaken by the claimant in the performance of his work for his employer, he would have not suffered either a re-fracture or a new fracture of his right wrist. Either way, it is clearly compensable under the facts and relevant law.

In order to be found compensable, a claimant must only show that he has suffered a personal injury that he has received in the course of his employment and that results from his employment. Barnett v. SWCC, 153 W.Va. 796, 172 S.E.2d 698 (1970), All three elements are clearly satisfied by the facts of this claim.

Additionally, the fact that the claimant may have had a prior injury to the same body part does not disqualify him from receiving workers' compensation benefits for a new injury. As the Supreme Court of Appeals held in Jordan v. SWCC, 156 W.Va. 159, 191 S.E.2d 497 (1972), “Where there is evidence of a pre-existing like injury, a new claim will not be treated as compensable unless it is directly attributable to a definite, isolated and fortuitous occurrence, that is to say, from a definable incident resulting from his employment.” There standards are also clearly satisfied by the current facts.

The arguments made by the appellant in its petition have also been made previously to the Administrative Law Judge and the Workers' Compensation Board of Review. In each

appeal, the compensability of the claimant's right wrist fracture was approved by both the Administrative Law Judge and the Board of Review. Both the Administrative Law Judge and the Board of Review found that the claimant had established the necessary elements to secure the compensability of the claim, and their decisions are correct.

The standard of review for this appeal is established in W.Va. Code §23-5-15d, which states that a decision of the Board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. In the instant claim, the decision of the Board contains none of these errors and, in fact, is well-founded in both the facts and applicable law. Because of this, there is no error, much less a reversible error.

#### CONCLUSION

Wherefore, the claimant/respondent, Charles Rollins, respectfully requests that the petition be denied and that the Order of the Workers' Compensation Board of Review dated November 22, 2019, be affirmed.

Respectfully yours,

Maroney, Williams, Weaver, & Pancake, PLLC  
Post Office Box 3709  
Charleston, WV 25337  
304/346-9629

By 

WV State Bar ID No: 5767

January 14, 2020

CERTIFICATE OF SERVICE

I, Edwin H. Pancake, counsel for Respondent herein, do hereby certify that I served the foregoing Response to Petition upon the following by hand delivery and/or by mailing a true and accurate copy of the same via the United States Mail, postage prepaid, on this the 14th day of January, 2020.

HAND DELIVERY:

Edythe Nash Gaiser, Clerk  
State of West Virginia  
Supreme Court of Appeals  
State Capitol Building  
Charleston, WV 25305

VIA UNITED STATES' POSTAL SERVICE:

Sean Harter, Esquire  
PO Box 350  
Scott Depot, WV 25560

Rockwood Casualty Insurance Company  
654 Main Street  
Rockwood PA 15557

  
\_\_\_\_\_  
EDWIN H. PANCAKE

## APPENDIX B – REVISED RULES OF APPELLATE PROCEDURE

### WORKERS' COMPENSATION APPEALS DOCKETING STATEMENT

Complete Case Title: Ramaco Resources, Inc. v. Charles Rollins  
Petitioner: Ramaco Resources, Inc. Respondent: Charles Rollins  
Counsel: Sean Harter Counsel: Edwin Pancake  
Claim No.: 2018024130 Board of Review No.: 2054430  
Date of Injury/Last Exposure: 04/20/2018 Date Claim Filed: 05/07/2018  
Date and Ruling of the Office of Judges: 07/01/2019  
Date and Ruling of the Board of Review: 11/22/2019  
Issue and Relief requested on Appeal: Affirm 11/22/2019 Board of Review Order

#### CLAIMANT INFORMATION

Claimant's Name: Charles Rollins  
Nature of Injury: Right Hand & Wrist  
Age: 56 Is the Claimant still working?  Yes  No. If yes, where: \_\_\_\_\_  
Occupation: Diesel Mechanic No. of Years: 20+years  
Was the claim found to be compensable?  Yes  No If yes, order date: 07/01/2019

#### ADDITIONAL INFORMATION FOR PTD REQUESTS

Education (highest): \_\_\_\_\_ Old Fund or New Fund (please circle one)  
Date of Last Employment: \_\_\_\_\_  
Total amount of prior PPD awards: \_\_\_\_\_ (add dates of orders on separate page)  
Finding of the PTD Review Board: \_\_\_\_\_

List all compensable conditions under this claim number: \_\_\_\_\_  
(Attach a separate sheet if necessary)

Are there any related petitions currently pending or previously considered by the Supreme Court?  
 Yes  No  
(If yes, cite the case name, docket number and the manner in which it is related on a separate sheet.)

Are there any related petitions currently pending below?  Yes  No  
(If yes, cite the case name, tribunal and the manner in which it is related on a separate sheet.)

If an appealing party is a corporation an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable, please so indicate below.

The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.

Do you know of any reason why one or more of the Supreme Court Justices should be disqualified from this case?  Yes  No  
If so, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.