

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Kevin Yates,
Claimant Below, Petitioner

vs.) **No. 22-0286** (BOR Appeal No. 2057503)
(JCN: 2021013893)

Montani Mechanical Group, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Kevin Yates appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Montani Mechanical Group, LLC, filed a timely response.¹ The issue on appeal is the claims administrator's rejection of the claim, which the Workers' Compensation Office of Judges ("Office of Judges") reversed and instead held the claim compensable for neck sprain, cervical radiculopathy, upper back sprain, and right shoulder girdle sprain. The Board of Review reversed the order on March 24, 2022, and reinstated the rejection of the claim. This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision effectively represents a reversal of a prior order of either the Workers' Compensation Commission or the Office of Judges, we may reverse or modify that decision only if it 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. *See* W. Va. Code §§ 23-5-15(c) & (e). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Mr. Yates, a plumber, filed a claim alleging that he injured his right shoulder and upper back while removing flooring at work. Mr. Yates first sought treatment five days later at St. Mary's Medical Center where, according to treatment records, he reported that his pain began at work. Mr. Yates sought treatment from several physicians and reported to each one that he injured his shoulder at work. On January 6, 2021, the claims administrator rejected the claim, which Mr. Yates protested.

¹Petitioner, Kevin Yates, is represented by Edwin H. Pancake, and respondent, Montani Mechanical Group, LLC, is represented by Lisa Warner Hunter.

Mr. Yates testified in a deposition that on the day he was injured, he was removing sub-flooring in a kitchen. He asserted that he requested help from his main office in the form of additional workers, but no help was sent. Mr. Yates stated that he did not realize he was injured until after he got home. Mr. Yates testified that he reported the injury to Tom Martin, the company owner, who advised him to seek medical treatment but not to file a workers' compensation claim. Mr. Yates testified that since the work injury occurred, he had no accidents, falls, car wrecks, or other injuries that could cause or aggravate his neck and shoulder issues. During cross-examination, Mr. Yates admitted that he forgot that he was in a car accident between the time of his alleged work injury and when he first sought medical treatment. Mr. Yates stated that he hit a black bear on the driver's side of his car, totaling the vehicle. Mr. Yates asserted that his neck was already symptomatic prior to the injury but admitted that he did not seek medical treatment for his neck and shoulder issues until after the vehicle accident occurred.

The Office of Judges reversed the claims administrator's rejection of the claim and held the claim compensable for neck sprain, cervical radiculopathy, upper back sprain, and right shoulder girdle sprain. It found that Mr. Yates consistently reported a work-related injury to every physician who treated him. The Office of Judges concluded that there was no evidence of record to refute Mr. Yates's assertion that he sustained a compensable injury and that the medical records and Mr. Yates's testimony show that a definite, isolated, fortuitous event occurred. The Office of Judges also concluded that there was no medical evidence of record to conclude that the claim should be denied based on Mr. Yates's motor vehicle accident.

In its March 24, 2022, decision, the Board of Review reversed the Office of Judges' order and reinstated the claims administrator's rejection of the claim. The Board of Review found that Mr. Yates initially testified in his deposition that he suffered no injuries or accidents, including car accidents, between the alleged work injury and the day he sought treatment. It further found, however, that on cross-examination he admitted that he was in a car accident after the alleged injury and that he did not seek medical treatment for the alleged work injury until after the car accident occurred.

On appeal, Mr. Yates argues that the Board of Review's decision is unsupported by the evidence and should be reversed because the decision is based solely on his car accident and ignores the medical evidence of record, which overwhelmingly supports compensability. After review, we agree with the reasoning and conclusions of the Board of Review. Pursuant to West Virginia Code § 23-4-1, 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. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). Though Mr. Yates alleges a right shoulder injury in the course of his employment, a preponderance of the evidence does not support compensability. As the Board of Review noted, Mr. Yates initially testified in his deposition that he suffered no injuries or accidents, including car accidents, between the alleged work injury and the day he first sought treatment. However, on cross-examination, he admitted that he was in a car accident following the alleged work injury when he was driving and struck a black bear, totaling his vehicle. Mr. Yates did not seek medical treatment for his alleged work injury until after the car accident occurred. Further, there are no

medical examinations of record prior to the motor vehicle accident, and, more importantly, there is no indication that Mr. Yates informed his physicians that he was in a motor vehicle accident. A preponderance of the evidence supports the Board of Review's reinstatement of the rejection of the claim, and the decision is therefore affirmed.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn