

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Oct 25 2022
11:34AM EDT
Transaction ID 68298699

CHARLESTON

VAUGHN W. HUTCHISON,

Petitioner,

and

Case No.: 22-ICA-105
JCN: 2021019542
CCN: 572-083502
DOI: 10-02-2020

RAYTHEON CORP.,

Respondent.

**BRIEF OF RESPONDENT
RAYTHEON CORP.**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	3
ASSIGNMENT OF ERROR	4
STATEMENT OF THE CASE.....	5
SUMMARY OF ARGUMENT	8
STATEMENT REGARDING ORAL ARGUMENT.....	9
ARGUMENT	10
 THE WORKERS' COMPENSATION BOARD OF REVIEW DID NOT ERR IN AFFIRMING THE REJECTION OF THE CLAIMANT'S APPLICATION FOR BENEFITS. 	
CONCLUSION.....	12
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Clark v. State Workmen’s Comp. Comm’r</i> , 155 W. Va. 276, 187 S.E.2d 213 (1972).....	10
<i>Devericks v. State Compensation Director</i> , 150 W. Va. 145, 144 S.E.2d 498 (1965).....	10
<i>Powell v. State Workers’ Comp. Comm’r</i> , 166 W. Va. 327, 273 S.E.2d 832 (1980).....	10
W. VA. CODE § 23-4-1 [2020]	9
W. VA. CODE § 23-5-12 [2020]	9

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ASSIGNMENT OF ERROR

This workers' compensation claim is in litigation pursuant to the Petitioner's protest to the claim administrator's order of April 16, 2021, which rejected the claimant's application for benefits related to COVID-19. The Office of Judges affirmed the permanent partial disability award by order dated April 21, 2022. By order dated August 19, 2022, the Workers' Compensation Board of Review affirmed the decision of the Office of Judges.

The Petitioner alleges that the Workers' Compensation Board of Review committed error in affirming the rejection of the underlying claim. The Respondent, Raytheon Corp., asserts that the Workers' Compensation Board of Review properly weighed the reliable evidence presented with regard to the compensability of COVID-19 under the West Virginia Workers' Compensation Act and properly affirmed the underlying orders of the Office of Judges.

STATEMENT OF THE CASE

The claimant is a 53-year old builder of aircraft de-icing units at the employer's production facility in Union, West Virginia. The claimant contracted COVID-19 in October 2020. The claimant related his contracting of COVID-19 to his employment on the basis that other employees in the facility where he worked also contracted the disease.

By order dated April 16, 2021, the claim administrator denied the claimant's application for benefits on the basis that the reported disease did not satisfy the statutory requirements of compensability under the West Virginia Workers' Compensation Act. The claimant protested the denial of benefits.

The claimant testified in support of his deposition on December 8, 2022. At that time, the claimant reported that he had worked for the employer for approximately 14 years. The claimant reported that he was working as a builder at the time he contracted COVID-19. He testified that he worked in a large, open room with approximately 20-25 other individuals building de-icing units that are used on airplanes. The claimant stated that he developed a cough before testing positive for COVID-19. The claimant ultimately had to be hospitalized for approximately six days because of his symptoms. He reported that the disease was introduced to his workplace by "a guy in shipping." The claimant reported that he and his co-workers attempted to distance themselves in the facility, but there were no physical barriers between them because of the nature of their work. He does believe that a mask mandate was in place at his workplace, but he noted that workers would remove their masks for lunch breaks in the cafeteria while eating. Claimant admitted to attending church services around the time that he contracted the disease, but he claimed to have limited his outside interactions with others beyond attending church services. Claimant reported that he lived with his minor son, and that his son went to stay with his mother while the claimant was ill. The claimant reported that his son did not contract COVID-19. Claimant testified that he did receive short-term disability benefits during his recovery period.

By decision dated April 21, 2022, the Office of Judges affirmed the underlying order. The Administrative Law Judge concluded that the claimant had developed a disease that affected the general population and was not specific to the claimant's occupation. The claimant appealed this decision to the Workers' Compensation Board of Review.

By decision dated August 19, 2022, the Workers' Compensation Board of Review also affirmed the rejection of this claim.

SUMMARY OF ARGUMENT

The Petitioner contracted COVID-19 in late 2020. The claimant subsequently filed an application for workers' compensation benefits related to the disease. Although the claimant contends that he contracted COVID-19 at his workplace, there is no medical evidence supporting this contention. The evidence on record establishes that the claimant contracted a disease of ordinary life that afflicted millions of people around the world during the same time period. While the claimant's development of COVID-19 was certainly unfortunate, there is no reliable evidence to link his development of the disease with his occupation.

STATEMENT REGARDING ORAL ARGUMENT

The Respondent, Raytheon Corp., does not believe that oral argument would enhance the Intermediate Court of Appeals' understanding of the issues presented in this appeal.

ARGUMENT

THE WORKERS' COMPENSATION BOARD OF REVIEW DID NOT ERR IN AFFIRMING THE REJECTION OF THE CLAIMANT'S APPLICATION FOR BENEFITS.

The Workers' Compensation Board of Review did not commit reversible error in the underlying decision. Pursuant to W. VA. CODE § 23-5-12, the Intermediate Court of Appeals must affirm the decision of the Workers' Compensation Board of Review unless the Petitioner shows that the findings are:

- (1) In violation of statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Board of Review's decision in the underlying protest was both lawful and in accordance with the preponderance of the reliable medical evidence presented. Under this analysis, the underlying decision of the Board of Review should be affirmed.

COVID-19 fails to meet the standards of compensability for an occupational disease under the West Virginia Workers' Compensation Act. W. VA. CODE § 23-4-1(f) defines workers' compensation coverage for occupational diseases. This section provides six criteria for the coverage of an occupational disease:

- (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease;

- (2) That it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- (3) That it can be fairly traced to the employment as the proximate cause;
- (4) That it does not come from a hazard to which workmen would have been equally exposed outside of the employment;
- (5) That it is incidental to the character of the business and not independent of the relation of employer and employee; and
- (6) That it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Furthermore, the statute plainly states, “No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows an incident of occupational disease as described in this chapter.” COVID-19 is a worldwide pandemic to which all people are exposed. Although the claimant contracted COVID-19, there is no reliable medical evidence to establish a causal connection between the claimant’s workplace and his contracting of COVID-19.

It is well-settled that the claimant bears the burden of proof in establishing a claim of occupational disease. *See, e.g., Clark v. State Workmen’s Compensation Commissioner*, 155 W. Va. 276, 187 S.E.2d 213 (1972), and *Devericks v. State Compensation Director*, 150 W. Va. 145, 144 S.E.2d 498 (1965). In order to establish a claim for benefits, the claimant must show by competent evidence that a “causal connection” between the disability and the work-related injury exists. *Id.* When proof offered by a claimant is based on speculation, such proof is inadequate to sustain a claim. *Id.* In this instance, the requisite causal connection between the claimant’s alleged condition and the claimant’s employment does not exist because the claim for benefits is purely speculative.

In *Powell v. State Workers’ Compensation Commissioner*, 166 W. Va. 327, 273 S.E.2d 832 (1980), the Supreme Court of Appeals discussed the application of the causation

requirements of occupational disease found in W. VA. CODE § 23-4-1. In *Powell*, the Court ruled a widow's claim for benefits to be compensable as a result of her husband's death from asbestos-related lung cancer. In applying W. VA. CODE § 23-4-1, the Court reasoned that the determination of causation in occupational disease claims turns on the "state of current scientific knowledge." Thus, the Court ruled that a *prima facie* case of causation arises only where (1) studies and research clearly link a disease to a particular hazard, and (2) the claimant was exposed to the hazard and is suffering from the disease to which it is connected. *Id* at 837. No such *prima facie* case has been made here because there is no reliable evidence to suggest that exposure to COVID-19 is unique to the claimant's workplace. COVID-19 is widely spread throughout every community in West Virginia; it is not unique to any workplace.

In light of the governing statutes and relevant evidence, the rejection of this claim was proper. No error occurred in the underlying decision of the Workers' Compensation Board of Review, and the employer respectfully requests that the August 19, 2022 order be affirmed.

CONCLUSION

Based upon the foregoing, the employer respectfully requests that this Court affirm the underlying decision of the Workers' Compensation Board of Review.

/s/ James W. Heslep
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2022, I served the foregoing
“Brief of Respondent” upon all counsel of record through File and Serve Xpress:

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