

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**FILED**  
October 24, 2013  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**CECIL R. SHREWSBURY,**  
**Claimant Below, Petitioner**

vs.) **No. 11-1757** (BOR Appeal No. 2045992)  
(Claim No. 2010137036)

**T & N ELECTRIC MOTOR EXCHANGE, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Cecil R. Shrewsbury, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. T & N Electric Motor Exchange, Inc., by Patricia A. Jennings, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 30, 2011, in which the Board affirmed a May 24, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 22, 2010, decision, which rejected the claim, because air testing done during Mr. Shrewsbury's employment demonstrated that he was not exposed to the hazards of breathing abnormal quantities of dust. 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. Shrewsbury worked for T & N Electric Motor Exchange as an electric motor repairman from March 15, 2004, through June 11, 2008. After he stopped working for T & N Electric Motor Exchange, Mr. Shrewsbury filed for workers' compensation benefits based on his exposure to the hazards of occupational pneumoconiosis. On June 22, 2010, the claims administrator rejected the claim. The claims administrator's decision was primarily based on air quality samplings which were taken by the employer during the period in which Mr. Shrewsbury

was employed. The claims administrator stated that these samples demonstrated that the air quality during Mr. Shrewsbury's employment was in compliance with OSHA standards for permissible exposure levels. On May 24, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on November 30, 2011, leading Mr. Shrewsbury to appeal.

The Office of Judges concluded that Mr. Shrewsbury has insufficient exposure to the hazards of breathing in abnormal quantities of dust in the course of and resulting from his employment. The Office of Judges also concluded that T & N Electric Motor Exchange has proven that Mr. Shrewsbury was not exposed to abnormal quantities of dust during his employment. The Office of Judges found that T & N Electric Motor Exchange took air quality samplings on three separate occasions during the period of Mr. Shrewsbury's employment. The Office of Judges found that the results of each sample were identical and were all in compliance with OSHA or industrial hygiene standards for particulate matter and other harmful substances. The Office of Judges found that these samples met the requirements of West Virginia Code of State Rules § 85-20-52.2 (2006) and demonstrated that Mr. Shrewsbury was not exposed to the hazard of breathing abnormal quantities of dust. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusion of the Board of Review and the findings of the Office of Judges. Mr. Shrewsbury has not demonstrated that he was exposed to the hazard of occupational pneumoconiosis for the requisite statutory periods. West Virginia Code § 23-4-1(b) (2008). T & N Electric Motor Exchange has presented credible samples demonstrating that it was in compliance with OSHA's permissible exposure levels for the period in which Mr. Shrewsbury worked at its facility. The only evidence Mr. Shrewsbury has presented to demonstrate that he was exposed to the hazards of occupational pneumoconiosis is his own testimony. This is not sufficient to demonstrate that he was exposed to the hazards of occupational pneumoconiosis in light of the record as a whole.

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: October 24, 2013**

**CONCURRED IN BY:**

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