

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CLAYTON L. MILLER,
Claimant Below, Petitioner

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0630 (BOR Appeal No. 2046521)
(Claim No. 2011040105)

A T MASSEY COAL COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Clayton L. Miller, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. A T Massey Coal Company, Inc., by Timothy E. Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 24, 2012, in which the Board affirmed an October 20, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 5, 2011, decision denying Mr. Miller's application for workers' compensation benefits for the injury that occurred on May 31, 2011. 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. Miller was working as a coal miner for A T Massey Coal Company, Inc. when he allegedly sustained an injury to his lower back on May 31, 2011. Mr. Miller alleges that he was dragging cable and building stoppings underground when he felt a pain in his back. Mr. Miller testified that he reported the injury to a team leader during his shift. When he completed his shift, there was no foreman or supervisor there to do an injury report, so he just went home.

That evening, Mr. Miller presented at Raleigh General Hospital seeking treatment for lower back and left leg pain. Raleigh General Hospital's records show that Mr. Miller stated that he stood up out of bed and as soon as his feet hit the ground, he felt pain shoot up his leg into his

buttock. The records show that Mr. Miller did not indicate that he had been injured at work. Dr. Wisman's records from June 3, 2011, show that Mr. Miller presented complaining that he fell three days ago and hurt his back. Dr. Wisman's records did not reflect that Mr. Miller stated his condition was related to his employment. Dr. Wisman noted that Mr. Miller's x-rays showed loss of disc space height at L4-L5 with bilateral facet arthrosis. On June 6, 2011, Mr. Miller presented at Raleigh General Hospital seeking treatment for back pain with an onset of seven days ago and stated that he was injured while lifting at work. Mr. Miller filed a report of injury and alleged a low back injury but he left blank the section asking for a description of how the injury occurred. The physician's section of that report of injury stated that Mr. Miller had sustained an occupational injury of the lumbar and that it aggravated a prior injury. Mr. Miller completed a second report of injury on June 13, 2011, and stated that he sustained an injury to his L4 and L5 spine while carrying B-Bond at work. The physician's section was completed by Dr. Wisman who stated that Mr. Miller had sustained an occupational injury, lumbar displacement with disc herniation that did not aggravate a prior injury.

The claims administrator denied the application for workers' compensation benefits. The Office of Judges affirmed the claims administrator's Order and held that Mr. Miller failed to show that he had sustained an injury in the course of and as a result of his employment on May 31, 2011. Mr. Miller disagrees and asserts that the preponderance of the evidence establishes that he sustained an injury to his lumbar spine on May 31, 2011, in the course of and resulting from his employment. A T Massey Coal Company, Inc. maintains that Mr. Hill failed to sustain his proper burden to establish that he sustained a work-related injury on May 31, 2011.

The Office of Judges found that there is no written evidence that Mr. Miller reported the injury to A T Massey Coal Company, Inc. The Office of Judges determined that Mr. Miller had been treated by Dr. Wisman for low back pain with radiculopathy prior to the alleged May 31, 2011, injury and therefore the diagnosis that Dr. Wisman stated as occupational is consistent with the diagnosis prior to the alleged injury. The Office of Judges found the findings on the x-rays were consistent with degenerative disc disease, arthritis and facet arthrosis. The Office of Judges held that Mr. Miller did not provide persuasive evidence that he sustained an injury on May 31, 2011, in the course of and as a result of his employment. The Board of Review reached the same reasoned conclusions in its decision of April 24, 2012. We agree with the reasoning and conclusions of the Board of Review.

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: January 16, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II

Justice Brent D. Benjamin disqualified