

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JOHN A. BROWN,
Claimant Below, Petitioner

FILED
January 14, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0754** (BOR Appeal No. 2046736)
(Claim No. 2010107619)

OWNERS SOLUTION, INC. ,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner John A. Brown, by Robert M. Williams, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Owners Solution, Inc. by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 25, 2012, in which the Board reversed a December 6, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's October 20, 2009, decision denying Mr. Brown's application for workers' compensation benefits. 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. Brown worked as truck driver for Owners Solution, Inc. Mr. Brown filed an initial Report of Injury stating that he felt sharp pain in his back on August 13, 2009, when he turned to walk to the back of his truck. The claims administrator denied his claim. In his second Report of Injury, Mr. Brown alleges that on August 15, 2009, his back went out when he was getting out of his truck after hitting a bump in the road and being jerked and bounced in his truck for a few hours. On the first and second Physician's Report of Injury, Logan Regional Medical Center found that Mr. Brown had aggravated a prior injury/disease that occurred in 2000. Dr. Padmanaban diagnosed Mr. Brown with a lumbar strain. The claims administrator denied Mr.

Brown's second application for workers' compensation benefits and held that neither an occupational injury nor an occupational disease occurred.

The Office of Judges reversed the claims administrator's decision and held the claim compensable because it was supported by a preponderance of the evidence. The Board of Review reversed the Office of Judges' Order and reinstated the claims administrator's decision because it determined that Mr. Brown failed to meet his burden of proof to establish that he sustained a personal injury. On appeal, Mr. Brown asserts that he did suffer an injury in the course of and as a result of his employment on August 15, 2009. He further argues that he has always acknowledged that he had a low back injury from an incident on August 14, 2000, but that Owners Solution, Inc. failed to submit any medical evidence that Mr. Brown did not have an aggravation of a preexisting injury. Owners Solution, Inc. maintains that more likely than not Mr. Brown's pain is attributable to his progressive degenerative disease and a prior injury, which is shown by the fact that he was seeking stronger narcotic medications for his chronic pain just four days prior to the alleged injury.

The Board of Review determined that there were too many discrepancies in the evidence to support the credibility of the claim. Mr. Brown filed an initial Report of Injury stating that he had sharp pain in his back on August 13, 2009, when he turned to walk to the back of his truck. After his initial claim was rejected, he filed a second Report of Injury stating that the injury to his back occurred on August 15, 2009, and was caused from hitting a bump in the road and being jerked and bounced around in his truck, which resulted in his back going out while he was getting out of his truck. Mr. Brown testified that his back had continued to hurt since his injury on August 14, 2000, and that he had sought treatment for his back at the Veterans Clinic on August 11, 2009. In the same deposition, he later testified that he did not remember going to the Veterans Clinic on August 11, 2009, and that he was having no problems with his back on August 15, 2009, until hitting the bump in the road. Mr. Brown further testified that he filed the second Report of Injury because the first was filled out by his wife and a lady working in the Emergency Room department and was not accurate. The Veterans Clinic's records showed that Mr. Brown had a lumbar spine MRI and treatment performed in 2008 for his low back pain that was present before the 2009 injury. The Board of Review held that Mr. Brown failed to sustain his burden of proof to establish that he suffered an injury in the course of and as a result of his employment and denied compensability. 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 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Menis E. Ketchum

Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, Not Participating