

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 10, 2014

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**JAMES RICHARDS,
Claimant Below, Petitioner**

vs.) **No. 12-0876** (BOR Appeal No. 2046805)
(Claim No. 2011009908)

**PATRIOT COAL CORPORATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner James Richards, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Patriot Coal Corporation, by Henry Bowen, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 27, 2012, in which the Board affirmed a January 13, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 4, 2011, decision which denied the claim for bilateral cubital tunnel syndrome. 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. Richards was employed as a bulldozer operator when he alleges he developed bilateral cubital tunnel syndrome. He testified in a deposition that due to the way he had to sit in order to operate machinery, a significant amount of pressure was placed on his elbows. This pressure caused numbness and pain in his arms. His treating physician, Marietta Babayev, M.D., performed an electrodiagnostic evaluation and determined that Mr. Richards suffered from bilateral cubital tunnel syndrome in November of 2009. The claims administrator rejected the claim on February 4, 2011.

Mr. Richards has a long history of neuropathy in his upper extremities. He was diagnosed with diabetic neuropathy in May of 2000. In October of 2001, an electromyography and nerve conduction velocity test revealed that he had axonal neuropathy. In June of 2002, a repeat test showed that Mr. Richards suffered from axonal and demyelinating sensory neuropathy. In June of 2010, he was treated by Satish Rao, M.D., who found that he had a history of diabetic neuropathy that was progressively worsening over time.

In a letter written to the claims administrator on November 5, 2010, Phillip Surface, D.O., admitted that he had no conclusive evidence that would support the causal relationship between Mr. Richards's bilateral cubital tunnel syndrome and his occupational duties. Mr. Richards was evaluated by Prasad Rao Mukkamala, M.D., on December 22, 2010. In the independent medical evaluation, Dr. Mukkamala found that if Mr. Richards did in fact have bilateral cubital tunnel syndrome, it was not caused by his occupational duties. He found that Mr. Richards had two non-occupational risk factors for carpal tunnel syndrome; diabetes and obesity. Marsha Bailey, M.D., agreed with Dr. Mukkamala in an independent medical evaluation on September 20, 2011. She found that Mr. Richards's risk factors for carpal tunnel syndrome were strong and included diabetes, obesity, hypothyroidism, and gout. She also found that he had previously been diagnosed with diabetic peripheral neuropathy, and his need to increase his levels of insulin over the years indicates that his diabetes is not well-controlled. She too concluded that Mr. Richards's cubital tunnel syndrome did not develop in the course of his employment.

The Office of Judges affirmed the decision of the claims administrator in its January 13, 2012, Order. The Office of Judges determined that the analysis for cubital tunnel syndrome is similar to the analysis for carpal tunnel syndrome. Medical conditions that frequently produce or contribute to carpal tunnel syndrome are diabetes, hypertension, obesity, alcohol abuse, rheumatoid arthritis, and postural abnormalities. The Office of Judges found that in this case, a preponderance of the evidence shows that Mr. Richards did not develop bilateral cubital tunnel syndrome in the course of his employment. He has a history of occupational carpal tunnel syndrome, but he also has a history of diabetes with peripheral neuropathy and arthritic-type symptoms in his upper extremities. He argued that his bilateral cubital tunnel syndrome was caused by his duties as a bulldozer operator. The Office of Judges determined that the opinions of Drs. Mukkamala and Bailey were persuasive. It found no persuasive evidence linking Mr. Richards's bilateral cubital tunnel syndrome to his occupational duties. Accordingly, the Office of Judges concluded that this left Dr. Mukkamala's and Dr. Bailey's opinions unimpeached from a medical perspective.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges in its June 27, 2012, decision and affirmed its Order. This Court agrees with the reasoning and conclusions of the Board of Review. Mr. Richards has several risk factors for the condition, most significantly diabetes. He has a history of diabetic neuropathy in his upper extremities. Both Drs. Mukkamala and Bailey were of the opinion that Mr. Richards's bilateral cubital tunnel syndrome did not occur in the course of his employment. A preponderance of the evidence therefore supports the decision 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: March 10, 2014

CONCURRED IN BY:

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