

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ronald Seckman v. Alcan Rolled Products–Ravenswood, LLC

Seckman · No. No. 11-1631 · Decided September 12, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers' Compensation Board of Review decision concerning Ronald Seckman's occupational pneumoconiosis claim. The court held that the evidence did not establish sufficient hazardous dust exposure during the statutory period to invoke the presumption under West Virginia Code § 23-4-8c(b).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Allen H. Loughry II; Justice Margaret L. Workman; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	September 12, 2013
DOCKET	No. 11-1631
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of an Office of Judges order upholding the claims administrator's determination that the claim was compensable on a non-medical basis but was not entitled to the occupational-pneumoconiosis presumption and had a last-exposure date of October 30, 1990.
STANDARD OF REVIEW	The Court considered whether the Board of Review's decision was in clear violation of a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Ronald Seckman v. Alcan Rolled Products–Ravenswood, LLC

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

occupational disease

administrative law

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming the determination that Seckman was not entitled to the statutory presumption of occupational pneumoconiosis under West Virginia Code § 23-4-8c(b).
2. Whether the evidentiary findings concerning Seckman's date of last exposure and the level of dust and fiber exposure were clearly erroneous or otherwise reversible.

HOLDINGS

1. The lower tribunals did not commit reversible error in finding that Seckman was not exposed to harmful levels of dust and particulate matter after October 30, 1990.
2. Seckman was not entitled to the statutory presumption because the period from January 26, 1981, through October 30, 1990, was insufficiently long under the statute.

KEY QUOTATIONS

"Based on this finding, the Office of Judges was correct to hold that Mr. Seckman was not entitled to the presumption that he suffered from occupational pneumoconiosis under West Virginia Code § 23-4-8c(b), because the period of January 26, 1981, to October 30, 1990, is an insufficient length of time under the statute." (at 2)

"Therefore, the decision of the Board of Review is affirmed." (at 2)

FACTUAL BACKGROUND

Ronald Seckman worked as a machinist in Alcan's cold roll department from January 1, 1981, through January 17, 2007, with a work stoppage from October 31, 1990, through June 29, 1992, because of a labor dispute. He filed a workers' compensation claim after being diagnosed with occupational pneumoconiosis and alleged exposure to asbestos, rolling-mill smoke, and welding fumes. The claims administrator and lower tribunals found abnormal exposure before October 30, 1990, but found that representative sampling showed dust and fiber levels below applicable limits after June 30, 1992. The Occupational Pneumoconiosis Board was unable to diagnose occupational pneumoconiosis.

PROCEDURAL HISTORY

The claims administrator issued its decision on March 7, 2008. The Office of Judges affirmed that decision on April 22, 2011, and the Board of Review affirmed on November 8, 2011. The Supreme Court of Appeals reviewed the Board's final order and affirmed it.

DISPOSITION

affirmed

OPINION

Ronald Seckman v. Alcan Rolled Products

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS September 12, 2013

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

RONALD SECKMAN, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 11-1631 (BOR Appeal No. 2045959) (Claim No. 2008024310)

ALCAN ROLLED PRODUCTS – RAVENSWOOD, LLC,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ronald Seckman, by John Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alcan Rolled Products – Ravenswood, LLC, by H. Toney Stroud, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated November 8, 2011, in which the Board affirmed an April 22, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 7, 2008, decision, which held Mr. Seckman's claim compensable on a non-medical basis, but determined that the claim was not subject to the presumption set out in West Virginia Code § 23-4-8c(b)

(2009), and that Mr. Seckman's date of last exposure was October 30, 1990. 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. Seckman worked as a machinist in the cold roll department of the Alcan Rolled Product plant in Ravenswood, West Virginia from January 1, 1981, through January 17, 2007. Mr. Seckman briefly stopped working at the Ravenswood plant from October 31, 1990, through June 29, 1992, because of a labor dispute. On December 20, 2007, Mr. Seckman filed an application for workers' compensation benefits based on being diagnosed with occupational 1 pneumoconiosis by Dr. Ward. Mr. Seckman alleged that he had been exposed to asbestos, smoke

from rolling mills, and welding fumes throughout his work at Alcan Rolled Products. On March 7, 2008, the claims administrator held the claim compensable on a non-medical basis. But the claims administrator found that Mr. Seckman's date of last exposure was October 30, 1990, based on the letter of Mike Merrifield, the employer's certified industrial hygienist. The claims administrator also found that Mr. Seckman had not been exposed for ten years during the fifteen years immediately preceding his date of last exposure. On October 21, 2008, the Occupational Pneumoconiosis Board was not able to make a diagnosis of occupational pneumoconiosis. Following the finding by the Occupational Pneumoconiosis Board, Alcan Rolled Products' industrial hygienist, Mr. Merrifield submitted an affidavit to the Office of Judges stating that the relevant areas of the Ravenswood facility had been in compliance with OSHA standards from June 30, 1992, through January 17, 2007, based on representative sampling conducted in the cold roll department where Mr. Seckman had worked. On April 22, 2011, the Office of Judges affirmed the claims administrator's March 7, 2008, decision. The Board of Review, then, affirmed the Order of the Office of Judges on November 8, 2011. In its Order, the Office of Judges concluded that Mr. Seckman had established that he was exposed to abnormal quantities of dust in the course of and resulting from his employment. The Office of Judges concluded this exposure occurred between January 26, 1981, when he began working at the Ravenswood facility, and October 30, 1990, when he stopped working due to the labor dispute. The Office of Judges concluded that, thereafter, Mr. Seckman, was no longer exposed to hazardous levels of dust and fibers. The Office of Judges found that the testimony of Mr. Seckman and the diagnosis of Dr. Ward were sufficient to demonstrate that he had been exposed to harmful levels of dust and particulate matter. But the Office of Judges also relied on the opinion of Mr. Merrifield. The Office of Judges found that the sampling conducted by Mr. Merrifield demonstrates that the airborne amount of dust and total fibers were all below the permissible limits or threshold limit values set by either OSHA or the American Conference of Governmental Industrial Hygienist. The Office of Judges found that Mr. Seckman was not exposed to hazardous amounts of dust after June 30, 1992. Based on this determination, the Office of Judges found that Mr. Seckman had not been sufficiently exposed to the hazards of dust inhalation to presume that he is suffering from occupational pneumoconiosis under West Virginia Code § 23-4-8c(b). 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. Although Mr. Seckman presented evidence that he had been exposed to the hazards of occupational pneumoconiosis, his evidence has been successfully contradicted by the sampling and testing of Mr. Merrifield who demonstrated that Mr. Seckman was not exposed to harmful levels of dust and particulate matter after October 30, 1990. The Office of Judges made this finding based on a preponderance of the evidence and did not commit any reversible error. Based on this finding, the Office of Judges was correct to hold that Mr. Seckman was not entitled to the presumption that he suffered from occupational pneumoconiosis under West Virginia Code § 23 4-8c(b), because the period of January 26, 1981, to October 30,

1990, is an insufficient length of time under the statute. 2 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: September 12, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Allen H. Loughry II DISSENTING: Justice Margaret L. Workman Justice Menis E. Ketchum 3