

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Bobby D. Starr v. Mountaineer Gas Company

No. 12-0059 · No. No. 12-0059 · Decided October 4, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Bobby D. Starr’s workers’ compensation claim. The court held that the evidence supported the conclusion that Starr did not timely report, and had not sufficiently established, a work-related occupational injury occurring on January 4, 2011.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II                                                                                                                |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                              |
| DECIDED               | October 4, 2013                                                                                                                                                                                                                                            |
| DOCKET                | No. 12-0059                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Claimant appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an order denying his application for workers’ compensation benefits.                                                                                             |
| STANDARD OF REVIEW    | The Board of Review’s decision would be affirmed unless it clearly violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record. |
| PRECEDENTIAL VALUE    | Memorandum decision; no reporter citation appears in the source                                                                                                                                                                                            |
| PARTIES               | Bobby D. Starr v. Mountaineer Gas Company                                                                                                                                                                                                                  |

TOPICS

- workers compensation
- administrative law
- standard of review
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the evidence established that Starr sustained a compensable occupational injury on January 4, 2011.
2. Whether the Board of Review clearly erred in finding that Starr failed to timely report a work-related injury and that the claim was not compensable.

## HOLDINGS

1. Starr did not establish by a preponderance of the evidence that he sustained an occupational injury on January 4, 2011.
2. The Board of Review's decision did not clearly violate a constitutional or statutory provision, result from erroneous conclusions of law, or rest on a material misstatement or mischaracterization of the evidentiary record; therefore, the decision was affirmed.

## KEY QUOTATIONS

*"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." (2)*

## FACTUAL BACKGROUND

Bobby D. Starr worked as a general utility worker for Mountaineer Gas Company and alleged that he injured himself on January 4, 2011, while working on an HP regulator. He did not immediately experience pain or identify the cause of his symptoms. Medical records from January 7, January 9, and January 12 documented no known injury or Starr's denial of trauma and work-related injury, and the injury was not reported until January 26, 2011. The only evidence supporting a work-related injury was Starr's testimony and Dr. Ahmed's notation that his neuropathy resulted directly from an occupational injury.

## PROCEDURAL HISTORY

The claims administrator denied Starr's application for workers' compensation benefits on February 9, 2011. The Workers' Compensation Office of Judges affirmed that decision on July 18, 2011, and the Board of Review affirmed on December 22, 2011. The Supreme Court of Appeals reviewed the Board's final order and affirmed it.

## DISPOSITION

affirmed

## OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED BOBBY D. STARR, October 4, 2013 RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 12-0059 (BOR Appeal No. 2046214) (Claim No. 2011024400) MOUNTAINEER GAS COMPANY, Employer Below, Respondent MEMORANDUM DECISION Petitioner Bobby D. Starr, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Mountaineer Gas Company, by Robert J. Busse, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated December 22, 2011, in which the Board affirmed a July 18, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's February 9, 2011, decision denying Mr. Starr'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. Starr worked as a general utility worker for Mountaineer Gas Company. He alleges that he injured himself on January 4, 2011, while breaking, setting apart, and replacing an HP regulator. Mr. Starr testified that he did not immediately have an onset of pain nor did he initially know the cause of his injury.

On January 7, 2011, and January 9, 2011, Williamson Memorial Hospital's records stated there was no known injury. On January 12, 2011, Dr. Hanif's report noted that Mr. Starr denied having any trauma, falls, a work-related injury, or a motor vehicle accident.

On February 2, 2011, Dr. Ahmed opined on the Report of Injury of record that Mr. Starr had neuropathy as a direct result of an occupational injury. 1 The Office of Judges affirmed the claims administrator's decision, and held that Mr. Starr did not sustain an occupational injury on January 4, 2011. Mr. Starr disagrees and asserts that he gave sufficient notice that he sustained an occupational injury to his employer on January 29, 2011, and further asserted that Dr. Ahmed, on the Report of Injury of record, clearly expressed that this injury was work-related.

The Office of Judges concluded that the preponderance of the evidence supports a finding that it is more likely than not that the claimant did not suffer an occupational injury on January 4, 2011. The preponderance of the evidence supports a finding that Mr. Starr did not timely report the injury, because it was not reported until January 26, 2011.

The emergency room report and the medical report from the Neurology and Spine Headache Center dated January 12, 2011, noted that Mr. Starr denied any trauma, falls, work-related injury, or motor vehicle accident, and therefore, support the finding that a work-related injury did not occur. Mr. Starr's symptoms suddenly appeared, and he completed an application for non-injury disability for extended absence on January 10, 2011.

The only evidence supporting a work-related injury occurred is Mr. Starr's testimony and Dr. Ahmed's opinion as stated on the Report of Injury of record. The Office of Judges held that the claim was not compensable.

The Board of Review reached the same reasoned conclusions in its decision of December 22, 2011. 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: October 4, 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 2