

1998 WL 46616 (Pa.Work.Comp.App.Bd.)

Workers' Compensation Appeal Board

Commonwealth of Pennsylvania

KEITH A. JONES  
PO BOX 79  
ADENA, OH 43901

v.

CONSOLIDATION COAL CO NORTH.W  
INDUST EMPLOYEE RELATIONS  
PO BOX 1314  
MORGANTOWN, WV 26507

A96-3735

February 6, 1998

**APPEAL BY CLAIMANT**

**FROM ORDER OF JUDGE BLOOM**

**PITTSBURGH/OCTOBER, 1996**

\*1 Insurance Carrier  
Self-Insured/Cantlon Associate  
4160 Washington Road  
P.O. Box 1350  
McMurray, PA 15317  
Claimant's Counsel  
Anthony J. Kovach, Esquire  
9 Court Street  
Parshall Building  
Uniontown, PA 15401  
Defendant's Counsel  
Carl J. Smith, Jr., Esq.  
200 Washington Trust Bldg  
Washington, PA 15301

**AFFIRMED**

**OPINION**

Keith A. Jones (Claimant) appeals from a Decision of Workers' Compensation Judge Irving L. Bloom (Judge) circulated September 9, 1996. The Judge dismissed the Claim Petition filed by Claimant. We affirm the Decision of the Judge.

Claimant filed a Claim Petition alleging that, on January 9, 1995, he sustained an occupational disease, in the nature of coal workers' pneumoconiosis, while in the employ of Consolidation Coal Company (Defendant). Defendant filed an Answer denying the allegations of the Claim Petition. The Judge found that Claimant does not have coal workers' pneumoconiosis nor any other occupational lung disease. The Judge therefore dismissed the Claim Petition. Claimant appealed arguing that the Judge's Decision is not supported by the evidence and that the Judge erred by dismissing the Claim Petition.

Our scope of review is limited to determining whether there is substantial, competent evidence to support necessary findings of fact made by the workers' compensation judge and whether the workers' compensation judge committed an error of law. Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Board (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). We are bound by the findings of the workers' compensation judge unless there is no competent evidence of record to support those findings. Id.

A claimant seeking to recover compensation benefits under Section 108 of the Pennsylvania Workers' Compensation Act,<sup>1</sup> 77 P.S. §27.1, has the burden of proving that he sustained a disability resulting from a disease enumerated therein and that the disease arose out of and was related to his employment. Hebden v. Workmen's Compensation Appeal Board (Bethenergy Mines, Inc.), 597 A. 2d 182 (Pa. Cmwlth. 1991). Section 108(o) defines the term "occupational disease" to include, Diseases of the heart and lungs, resulting in either temporary or permanent total or partial disability or death, after four years or more of service in fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such firemen.

77 P.S. §27.1(o).

Robert Altmeyer, M.D. is board-certified in internal medicine and pulmonary disease. He examined Claimant, obtained a history from him, and reviewed his medical records. Dr. Altmeyer testified that Claimant has no respiratory or pulmonary impairment, and no lung disease (N.T. 04/12/96, p. 53). The Judge accepted the testimony of Dr. Altmeyer as credible and rejected the contrary testimony of Jerome J. Lebovitz, M.D., Claimant's medical witness.

\*2 The workers' compensation judge has complete authority over questions of credibility, conflicting medical evidence and evidentiary weight. Sherrrod v. Workmen's Compensation Appeal Board (Thoroughgood, Inc.), 666 A.2d 383 (Pa. Cmwlth. 1995). Because the testimony of Dr. Altmeyer constitutes sufficient competent evidence to support the Judge's finding that Claimant does not have coal workers' pneumoconiosis nor any other occupational lung disease, we cannot disturb this finding. Moreover, given this finding, the Judge properly dismissed Claimant's Claim Petition.

Accordingly, we enter the following Order.

**ORDER**

The Decision of the Judge dismissing Claimant's Claim Petition is hereby affirmed.

**BY THE BOARD:**

Robert T. McIntyre  
Commissioner

**CONCURRED IN BY:**

Susan McDermott  
Commissioner  
Joseph P. Santone  
Commissioner  
William J. Atkinson  
Commissioner  
Herbert W. Hoffman  
Commissioner  
Gail L. O'Neal  
Commissioner

Footnotes

<sup>1</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1066.