

WEST VIRGINIA

CLIENT EXPRESSES, “BAILEY & WYANT PLLC WAS A GOD SEND”



Attorney Jeffrey Carder and the Bailey & Wyant workers' compensation team secured another big win for its client this month. The claimant in this matter protested a claims administrator's order denying his claim for occupational pneumoconiosis. The claimant filed his application for benefits in 2019 indicating that he had recently been diagnosed with asbestosis and that he believed that he was exposed to asbestos while working as an electrician for the employer. The claimant had retired in 2014. W. Va. Code § 23-4-15(b) addresses the period of time in which a claimant must file his claim for occupational pneumoconiosis.

For an employee to be entitled to occupational pneumoconiosis benefits, the application must be filed within 3 years from the last day of exposure or within 3 years from the date the employee was diagnosed with occupational pneumoconiosis or it was made known to the employee that he had occupational pneumoconiosis, whichever is longer. The claimant in this matter argued that whereas he had retired in 2014, more than 3 years from the date of last possible exposure from filing his application for benefits in 2019, he only became aware of his diagnosis when he underwent breathing studies at the Occupational Lung Center in 2019 and therefore was within the statute of limitations for filing his claim. However, Bailey & Wyant attorneys were able to uncover through discovery old medical records and a prior occupational pneumoconiosis claim filed by the claimant. These records demonstrated that the claimant had been diagnosed with asbestosis as early as 1990, long before the claimant came to work for the employer in this matter and had received benefits under an occupational pneumoconiosis claim filed with his employer back in the 90s. Records also demonstrated that

he received treatment and monitoring for his condition somewhat frequently, documenting a diagnosis of asbestosis throughout the years leading up to 2014.

In being presented with this evidence, the West Virginia Workers' Compensation Office of Judges affirmed the claims administrator's order denying the claim. Because the claimant's last possible date of exposure was in 2014, more than 3 years before filing his application, and the claimant's own medical records demonstrated that he knew or should have known about his diagnosis more than 3 years before filing his application, the claimant's application for benefits was not timely and the claims administrator's order was correct in denying the claim.

The client was extremely pleased with all of Bailey & Wyant PLLC's work on this claim, especially that the attorneys took time out of their day to keep them updated throughout the process. The client expressed that Bailey & Wyant was a God send.



JEFFREY CARDER

304.345.4222
jcarder@baileywyant.com