

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

LEE H. SYLVESTER, Petitioner

vs.) **No. 11-0268** (BOR Appeal No. 2044947)
(Claim No. 2008024974)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ALLEGHENY ENERGY SERVICE CORP., Respondent**

MEMORANDUM DECISION

Petitioner Lee H. Sylvester, by George Zivkovich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated January 18, 2011, in which the Board affirmed an August 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's decision to close Mr. Sylvester's claim for the payment of temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Mr. Sylvester was injured on December 18, 2007, while picking up some tubing through his work as a maintenance mechanic. The injury was held compensable for lumbar strain by the claims administrator on December 28, 2007. He ceased his employment January 7, 2008. Over the next two years, Mr. Sylvester underwent four doctor's examinations, an MRI, and two x-rays to determine treatment options. Three different doctors found that Mr. Sylvester had reached maximal medical improvement; Dr. Dauphin, Mr. Sylvester's own doctor, made the latest finding in April of 2010.

The claims administrator closed Mr. Sylvester's temporary total disability benefits in July of 2009. On April 1, 2010, Dr. James Dauphin examined Mr. Sylvester and found that he had achieved maximal medical improvement.

Based on the findings of the claims administrator, Dr. Dauphin, and other medical examinations, the Office of Judges found that there was insufficient medical evidence to necessitate paying additional temporary total disability benefits. The Board of Review held the Office of Judges was not clearly wrong in its decision and affirmed.

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 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin