

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**JESSE J. PRUNEST  
Claimant Below, Appellant**

**vs.) No. 35749 (BOR Appeal No. 2043568)  
(Claim No. 960037739)**

**WEST VIRGINIA OFFICE INSURANCE  
COMMISSION and HILLTOP CONSTRUCTION  
COMPANY, Appellees**

**FILED**

**June 22, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review order dated March 4, 2010, in which the Board reversed an August 27, 2009, order of the Workers' Compensation Office of Judges which had reversed the finding of the Claims Administrator that the Appellant was not entitled to a referral to the Center for Pain Relief and for pain injections. In this appeal, the Appellant contends that the Board of Review erroneously reversed the decision of the Office of Judges and that the decision of the Office of Judges should be reinstated.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. Having considered the parties' submissions and the relevant decision of the lower tribunal, this Court is of the opinion that the decisional process would not be significantly aided by oral argument. 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.

The Appellant, employed as a mechanic by Hilltop Construction Company, suffered an injury to his low back on February 19, 1996, while pulling a hose from a fuel truck. The Appellant was initially treated for a back strain and was diagnosed with a soft tissue injury to the lumbar spine. The Appellant was granted a 7% PPD award in 1996. Subsequent to a protest by the Appellant, an additional 3% PPD was awarded in December 1999. An additional 10% PPD was awarded in 2004 and affirmed by this Court.

In 2009, the Appellant submitted a request for authorization for a referral to the Center for Pain Relief and also sought pain injections. In support of this request, the Appellant

submitted the reports of Dr. Syed A. Zahir and Dr. Rajesh V. Patel, substantiating the existence of continuing pain and discomfort in the Appellant's neck and back. Both physicians indicated that the Appellant could benefit from referral to the pain clinic and injections.

The Claims Administrator denied authorization for the requested injections and referral to the Center for Pain Relief, finding that the report of Dr. Paul Bachwitt indicated that any treatment for cervical and lumbar spine strain should have concluded, that the Appellant had reached maximum medical improvement, and that Dr. Bachwitt clearly stated that the Appellant's current complaints were not the result of the compensable injury of February 19, 1996.

The Office of Judges reversed that conclusion and authorized referral to the pain clinic and injections, reasoning that the reports of Dr. Zahir and Dr. Patel presented sufficient evidence to warrant such additional action. In reversing the Office of Judges, the Board of Review explained that neither Dr. Zahir nor Dr. Patel attributed the need for pain clinic referral or injections to the 1996 compensable injury. The Board relied upon the report of Dr. Bachwitt in concluding that no additional treatment was warranted and that the Appellant suffered degenerative changes, unrelated to the compensable injury.

On appeal to this Court, the Appellant asserts that the Board improperly interpreted the reports of Dr. Zahir and Dr. Patel and that the referral to the pain clinic should have been authorized. This Court's review of the briefs and evidence of record indicates that the Board of Review properly reversed the Office of Judges. The evidence submitted by the Appellant, in the form of medical reports of Dr. Zahir and Dr. Patel, did not establish a causal connection between the compensable injury and the Appellant's current ailments. Dr. Bachwitt specifically stated that the Appellant had reached the maximum degree of medical improvement and that the need for pain clinic referral and injections was not a result of the 1996 compensable injury.

Based upon the foregoing, this Court finds that the decision of the Board is not in clear violation of constitutional or statutory provisions, clearly the result of erroneous conclusions of law, or so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. This Court consequently affirms the Board's order denying the Appellant's request for a referral to the Center for Pain Relief and pain injections.

Affirmed.

**ISSUED:** June 22, 2011

**CONCURRED IN BY:**

Chief Justice Workman

Justice Davis

Justice Ketchum

Justice McHugh

Justice Benjamin dissents and would reverse and remand the claim for entry of an order authorizing a referral to a pain center and for appropriate pain injections.