

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

March 6, 2013

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

**KEVIN LEE HOEBEKE,**  
**Claimant Below, Petitioner**

vs.) **No. 11-0793** (BOR Appeal No. 2045119)  
(Claim No. 860048319)

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER**  
**Commissioner Below, Respondent**

**and**

**GENERAL TIRE, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Kevin Lee Hoebeke, by George Zivkovich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Gary Mazezka, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 21, 2011, in which the Board affirmed a September 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 4, 2009, decision denying Mr. Hoebeke's request for an MRI. 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. Hoebeke injured his shoulder on April 7, 1986, while working as an automotive technician, and the claim was held compensable for sprain/strain of the rotator cuff, cervical spondylosis with myelopathy, and carpal tunnel syndrome. On April 14, 2009, Mr. Hoebeke's treating physician, Dr. Rao, stated in a treatment note that he would like approval for an MRI. On September 17, 2009, Dr. Mansour performed an independent medical evaluation and found that Mr. Hoebeke was at maximum medical improvement and that no further diagnostic testing was indicated.

In its Order affirming the claims administrator's December 4, 2009, decision, the Office of Judges held that the preponderance of the evidence fails to establish that the requested MRI is either reasonable or necessary medical treatment. Mr. Hoebeke disputes this finding, and asserts that Dr. Rao, as his treating physician, is in the best position to determine the necessity of the requested MRI.

The Office of Judges noted that the claims administrator's decision does not specify what portion of Mr. Hoebeke's anatomy was to be examined during the MRI, but then found that Dr. Rao's treatment notes indicate that the cervical and thoracic spine were to be the subject of the study. The Office of Judges then found that the report of Dr. Mansour is the most detailed and most recent medical evidence regarding Mr. Hoebeke's current condition. Finally, the Office of Judges found that Dr. Mansour's conclusion that Mr. Hoebeke had reached maximum medical improvement "constitutes the most credible analysis of the present fact situation". The Board of Review reached the same reasoned conclusions in its decision of April 21, 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: March 6, 2013**

**CONCURRED IN BY:**

Chief Justice Brent D. Benjamin  
Justice Robin J. Davis  
Justice Margaret L. Workman  
Justice Allen H. Loughry II

**DISSENTING:**

Justice Menis E. Ketchum