

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

January 14, 2014

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

**MICHAEL L. TROWBRIDGE,**  
**Claimant Below, Petitioner**

vs.) **No. 12-0606** (BOR Appeal No. 2046593)  
(Claim No. 2003052829)

**CONSOLIDATION COAL, MID-CONT BLUEFIELD,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Michael L. Trowbridge, by M. Jane Glauser, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Consolidation Coal Company, by Edward M. George III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 20, 2012, in which the Board affirmed an October 21, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges denied Mr. Trowbridge's request for attorney's fees and costs arising from the litigation of the claims administrator's January 5, 2011, decision denying Mr. Trowbridge's request for an increase in the dosage of the medication Lexapro. 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. Trowbridge injured his back on April 8, 2003, when he stepped into a hole. On November 29, 2007, the Office of Judges added depressive disorder as a compensable component of the claim, and on January 27, 2010, the Office of Judges authorized the use of Lexapro for the treatment of Mr. Trowbridge's depression. On January 4, 2011, Dr. Chalifoux, Mr. Trowbridge's treating physician, submitted a request for authorization to increase Mr. Trowbridge's Lexapro dosage from 10 milligrams to 20 milligrams. The claims administrator

denied the request on January 5, 2011. Following litigation, and the ultimate reversal of, the claims administrator's January 5, 2011, decision, Mr. Trowbridge filed a petition for attorney's fees and costs arising from the litigation of the January 5, 2011, claims administrator's decision.

In its Order of October 21, 2011, the Office of Judges held that Mr. Trowbridge is not entitled to an award of attorney's fees and costs stemming from the litigation of the January 5, 2011, claims administrator's decision. Mr. Trowbridge disputes this finding and asserts that the claims administrator's denial of his request for authorization of an increased dosage of Lexapro was unreasonable because the Office of Judges has overturned multiple decisions from the claims administrator's denying authorization for an increased dosage of Lexapro, and because an increased dosage of Lexapro has been requested by his treating physician to treat his compensable depression.

West Virginia Code § 23-2C-21(c) (2009) states:

Upon a determination by the Office of Judges that a denial of compensability, a denial of an award of temporary total disability or a denial of an authorization for medical benefits was unreasonable, reasonable attorney's fees and the costs actually incurred in the process of obtaining a reversal of the denial shall be awarded to the claimant and paid by the private carrier or self-insured employer which issued the unreasonable denial. A denial is unreasonable if, after submission by or on behalf of the claimant, of evidence of the compensability of the claim, the entitlement to temporary total disability benefits or medical benefits, the private carrier or self-insured employer is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the time of the denial which is relevant and probative and supports the denial of the award or authorization.

The Office of Judges found that the claims administrator's January 5, 2011, denial of Mr. Trowbridge's request for authorization for an increased dosage of Lexapro was based on a finding that there was no medical documentation of record justifying an increase in dosage. The Office of Judges then found that at the time of the January 5, 2011, decision the claims administrator was aware that Mr. Trowbridge had a problem with depression. The Office of Judges further found that Dr. Chalifoux's January 4, 2011, request to the claims administrator merely listed the medications Mr. Trowbridge was currently taking, including a Lexapro dosage of 20 milligrams. The Office of Judges concluded that based on the information the claims administrator had available at the time of its January 5, 2011, decision, its denial of Mr. Trowbridge's request for authorization to increase his dosage of Lexapro was not unreasonable. Therefore, the Office of Judges further concluded that an award of attorney's fees and costs is not warranted in the instant claim. The Board of Review reached the same reasoned conclusions in its decision of April 20, 2012. 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: January 14, 2014**

**CONCURRED IN BY:**

Chief Justice Robin J. Davis

Justice Menis E. Ketchum

Justice Allen H. Loughry II

**DISSENTING:**

Justice Margaret L. Workman

Justice Brent D. Benjamin, not participating