

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RICKY D. HILL,
Claimant Below, Petitioner

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0627 (BOR Appeal No. 2046586)
(Claim No. 2010139210)

KIAH CREEK TRANSPORTATION, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ricky D. Hill, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Kiah Creek Transportation, Inc., by Matthew L. Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 1, 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 affirmed the claims administrator's December 8, 2010, decision denying Mr. Hill's request for temporary total disability benefits. 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. Hill was employed as a coal truck driver/laborer for Kiah Creek Transportation, Inc. when he injured his lower back while driving a loaded coal truck on June 9, 2010. Mr. Hill's claim was held compensable for sprain/strain of the lumbar region. Dr. Mukkamala found Mr. Hill to have reached maximum medical improvement on October 26, 2010, with an 8% whole person impairment. The claims administrator approved rehabilitation temporary total disability benefits from October 25, 2010, through December 29, 2010. The claims administrator closed the claim for temporary total disability benefits on December 8, 2010, upon Dr. Mukkamala's report that Mr. Hill had reached maximum medical improvement. The claims administrator

closed the case for rehabilitation services on January 19, 2011, because Mr. Hill had not been released to return to work or to participate in rehabilitation. The Office of Judges affirmed the claims administrator's Order and held that there was no error in the closure of the claim for temporary total disability benefits. Mr. Hill disagrees and asserts that despite Dr. Mukkamala's assertions, he continued to receive scheduled medical treatment for his lower back and did not reach maximum medical improvement until February 16, 2011, when he was released to return to work.

The Office of Judges held that there was no error in the closure of the claim for temporary total disability benefits. Mr. Hill was discharged from the work conditioning program on December 27, 2010. Mr. Kennedy, a physical therapist, reported that Mr. Hill had completed four weeks of the work conditioning program and that his work classification at the time of discharge was light physical demand. Dr. Klein opined that Mr. Hill was not yet medically ready for light duty, or a desk job, because of the pain level that he was reporting. Dr. Klein did state that he would release Mr. Hill for light duty or a desk job at Mr. Hill's request; Mr. Hill declined. On January 17, 2011, Mr. Hill reported to Dr. Briggs that he had put up a ceiling fan the previous day and had increased pain plus weakness, numbness, and tingling in both legs. Dr. Briggs diagnosed Mr. Hill with facet syndrome and degeneration of lumbar or lumbosacral intervertebral disc, which are not compensable conditions. The Office of Judges determined that Mr. Hill received rehabilitation temporary total disability benefits from October 25, 2010, through December 29, 2010; that Mr. Hill was found to have reached maximum medical improvement on October 26, 2010; that Mr. Hill had an intervening event in January of 2011; and that Dr. Briggs's diagnosis on January 17, 2011, did not include a compensable component. The Office of Judges held that the closure of the claim for temporary total disability benefits was appropriate. The Board of Review reached the same reasoned conclusions in its decision of May 1, 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 16, 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