

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 27, 2014

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

SAMUEL J. PERRY,
Claimant Below, Petitioner

vs.) **No. 13-0339** (BOR Appeal No. 2047812)
(Claim No. 2008002858)

SWVA, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Samuel J. Perry, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. SWVA, Inc., by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 4, 2013, in which the Board affirmed an October 2, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 24, 2012, decision denying additional psychotherapy. 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. Perry worked for SWVA, Inc., on July 19, 2007, when he was trapped and burned by a flash fire. Mr. Perry's submitted a workers' compensation application which was subsequently held compensable. Mr. Perry also experienced a psychiatric sequela as a result of his injury. He was examined by Bobby Miller, M.D. Dr. Miller diagnosed post-traumatic stress disorder and prescribed medication. At the first examination Dr. Miller opined that Mr. Perry would need the medication for one year. Mr. Perry reported back to Dr. Miller several times. Dr. Miller performed various tests on Mr. Perry. At the conclusion of the testing, Dr. Miller found that Mr.

Perry had improved in the area of his mood disorder but had psychiatric problems unrelated to his compensable injury. The Office of Judges examined Dr. Miller's report and determined it was credible. The only evidence Mr. Perry offered was a request for psychotherapy from Michael A. Goldman, LPC, who was identified by Mr. Perry to be his psychotherapist. Mr. Goldman's request was not accompanied by any report or explanation regarding the additional treatment.

The Office of Judges then weighed Dr. Miller's well-reasoned report against Dr. Goldman's conclusory comment that Mr. Perry should undergo psychotherapy. The Office of Judges concluded that Dr. Miller's report was more credible and supported by the evidence. The Office of Judges affirmed the claims administrator's decision to deny the psychotherapy treatment. The Board of Review adopted the findings and conclusion of the Office of Judges and affirmed.

We agree with the findings of the Office of Judges and the conclusions of the Board of Review. Mr. Perry has failed to establish by a preponderance of the evidence that further psychotherapy is reasonably necessary to treat his compensable condition. The credible and well-reasoned report of Dr. Miller shows that Mr. Perry has reached his maximum degree of medical improvement and no longer needs therapy for his compensable condition of post-traumatic stress disorder.

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: June 27, 2014

CONCURRED IN BY:

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