

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LARRY W. WILLIAMS, Petitioner

November 10, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101167 (BOR Appeal No. 2043998)
(Claim No. 2004009891)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CHARLESTON STEEL COMPANY, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board affirmed a December 23, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's June 15, 2009, denial of medical benefits. The appeal was timely filed by the petitioner. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. 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 Office of Judges found the requested injections were not medically related and reasonably required medical treatment for the compensable injury. The petitioner argues that the treating physician's statement and treatment notes are the most current, reliable, and credible medical evidence and the authorization should be granted based upon the opinion of such a physician.

In its Order affirming the Claims Administrator's denial of medical benefits for the

compensable injury, the Office of Judges noted two prior occasions in which the Office of Judges had affirmed the denial of injections in this claim. (December 23, 2009, Office of Judges Order, p. 5). The Office of Judges noted the absence of evidence which would persuade a different outcome. *Id.* In each of the prior Office of Judges decisions, it noted the lack of evidence proving the requested treatment was related to the compensable injury. (August 9, 2007, Office of Judges Order, p. 3; December 19, 2008, Office of Judges Order, p. 6). The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of August 19, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the August 19, 2010, Board of Review Order is affirmed.

Affirmed.

ISSUED: November 10, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum