

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**BRIAN HAMILTON, Petitioner**

**December 16, 2011**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101254 (BOR Appeal No. 2044542)**  
**(Claim No. 2009067992)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
NEWTOWN ENERGY, INC., Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 15, 2010, in which the Board affirmed a May 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Hamilton's application for reopening and temporary total benefits. The appeal was timely filed by the petitioner and a response was filed by Newtown Energy, Inc. (hereinafter "Newtown"). 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, response, 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 Board of Review held Mr. Hamilton failed to make the requisite preponderance of the evidence showing that he suffered an aggravation or progression of his compensable injuries sufficient for a reopening of the claim for temporary total benefits. Mr. Hamilton argues the relevant medical evidence from Dr. Dallas Martin, Dr. H.S. Ramesh, and Dr. Hill establish his compensable injuries progressively worsened following the work-related

accident. Further, Mr. Hamilton argues his uncompleted functional capacity evaluation establishes he is incapable of working and is entitled to a reopening of his claim. Newtown, on the other hand, argues Mr. Hamilton has failed to make the requisite preponderance of the evidence showing that his compensable conditions underwent an aggravation or worsening following closure of the claim.

In its Order, the Office of Judges found Mr. Hamilton filed the claim for injury to his neck, left shoulder, and thoracic spine, which was found compensable and temporary total disability benefits paid for a time and then closed. (May 12, 2010, Office of Judges Order, p. 11). It further held reopening was denied by the claim's administrator because Mr. Hamilton did not show a progression or aggravation of his compensable condition. *Id.* Further, Mr. Hamilton's complaints were subjective and continuing and Dr. Prasadarao Mukkamala found Mr. Hamilton had reached maximum medical improvement. *Id.* Mr. Hamilton was also found to have failed to reveal valid evidence of functional capacity and abused medications. *Id.* The Office of Judges, too, found no basis for granting Mr. Hamilton's application for reopening for temporary total disability benefits or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of September 12, 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 Court affirms the Board of Review order denying Mr. Hamilton's request to reopen his claim for temporary total disability benefits.

Affirmed.

ISSUED: December 16, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh