

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

GILBERT D. HAGERMAN, Petitioner

vs.) **No. 11-0313** (BOR Appeal No. 2044936)
(Claim No. 2006062324)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JENNIFER L. SMITH, Respondent**

MEMORANDUM DECISION

Petitioner Gilbert D. Hagerman, by Gregory Prudich, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order closing the claim for temporary total disability benefits. Jennifer L. Smith, by H. Toney Stroud, her attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 19, 2011, in which the Board affirmed an August 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 7, 2009, Order which closed the claim for temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Mr. Hagerman was working as a truck driver for Jennifer Smith when he was injured. The claim was held compensable for sprain/strain of the lumbar region, pain in the lower leg, and sprain/strain of the thoracic region. The claims administrator on September 7, 2009, closed the claim for temporary total disability benefits.

The Office of Judges, in affirming the claims administrator's Order, found that the evidence established that Mr. Hagerman was no longer temporarily and totally disabled due to

the compensable injuries. On appeal, Mr. Hagerman argues that he is temporarily and totally disabled due to a lumbar disc herniation which resulted from the compensable injury. This Court held in Case Number 11-1710 that the lumbar disc herniation is not a compensable condition in this claim. In this case, the Office of Judges noted that Mr. Hagerman had been diagnosed with progressive non-compensable problems in his back, which according to MRI results are progressing. It also noted that according to Dr. Kropac, Mr. Hagerman has reached maximum medical improvement regarding the compensable injuries.

In reaching the conclusion to close the claim for temporary total disability benefits, the Office of Judges found that the preponderance of the evidence did not demonstrate that Mr. Hagerman's current disability preventing him from working is attributable to the November 9, 2006, compensable injuries. The Board of Review reached the same reasoned conclusion in its decision of January 19, 2011.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: September 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh