

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

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

WILLARD J. TYGRET, Petitioner

vs.) **No. 11-0332** (BOR Appeal No. 2045203)
(Claim No. 2009079132)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PROCESS CONSTRUCTION, INC., Respondent**

MEMORANDUM DECISION

Petitioner Willard J. Tygrett, by John Shumate Jr., his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order. Process Construction, Inc., by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated February 11, 2011, in which the Board affirmed an October 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 15, 2010, and March 3, 2010, Orders denying a request for a reopening for payment of temporary total disability benefits, and denying a request for a consultation with the WVU Spine Center. 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. Tygrett was employed with Process Construction, Inc. when he was injured while at work on January 8, 2009. On June 23, 2009, Dr. Guberman found that Mr. Tygrett had reached maximum medical improvement. On January 15, 2010, the claims administrator denied a request for a reopening for payment of temporary total disability benefits, and denied a request for a

consultation with the WVU Spine Center. On March 3, 2010, the claims administrator closed the claim for temporary total disability benefits.

The Office of Judges, in affirming the claims administrator's Orders, held that Mr. Tygrett has reached maximum medical improvement, his compensable condition has not progressed or been aggravated to justify a reopening for temporary total disability benefits, and the requested medical treatment is for non-compensable conditions. Mr. Tygrett argues that he has suffered a progression of his condition which now requires surgery and additional treatment, and he should be entitled to temporary total disability benefits and the requested medical treatment. Process Construction, Inc. maintains that the requested temporary total disability benefits and the medical treatment are related to a non-compensable condition.

In reaching the conclusion to affirm the claims administrator's Orders, the Office of Judges found that the preponderance of the evidence established that Mr. Tygrett did not qualify for continued temporary total disability benefits. It noted that Dr. Guberman found that Mr. Tygrett had reached maximum medical improvement on June 23, 2009. Additionally, it noted that he failed to show that his condition had progressed or been aggravated, and therefore, the request for reopening was properly denied. The Office of Judges also found that the requested medical benefits were related to non-compensable conditions of this claim, and were properly denied. The Board of Review reached the same reasoned conclusions in its decision of February 11, 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 Margaret L. Workman
Justice Thomas E. McHugh

DISSENTED IN BY:

Justice Brent D. Benjamin