

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROGER D. O'NEAL,
Claimant Below, Petitioner

FILED
November 18, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0238** (BOR Appeal No. 2046220)
(Claim No. 2010131584)

INTERNATIONAL COAL GROUP, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Roger D. O'Neal, by John H. Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. International Coal Group, Inc., by Bradley A. Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 27, 2012, in which the Board affirmed an August 5, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 25, 2010, decision closing Mr. O'Neal's claim on a temporary total disability benefits basis. 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. O'Neal worked as a heavy equipment operator for International Coal Group, Inc. On April 19, 2010, he suffered an injury to his lower back from twisting when he was pulling himself up to tighten a valve on a pipe. The claims administrator closed Mr. O'Neal's claim on a temporary total disability basis. On September 7, 2010, Dr. Wahi concluded that Mr. O'Neal had reached maximum medical improvement. On March 3, 2011, Dr. Oar concluded that Mr. O'Neal was temporarily and totally disabled on September 20, 2010, up until the present time due to his compensable occupational injury.

The Office of Judges affirmed the claims administrator's decision, and held that Mr. O'Neal had reached maximum medical improvement by the date of Dr. Wahi's report, and that the record does not reflect any active course of treatment proposed to address Mr. O'Neal's complaints of pain other than palliative care. Mr. O'Neal disagrees and asserts that Dr. Oar's conclusions specifically stated that his symptoms were the result of his compensable injury, and that he was temporarily and totally disabled throughout the entire period of his care.

The Office of Judges determined that Dr. Oar's conclusions were less credible than Dr. Wahi's conclusions because his report dated March 3, 2011, failed to state any reason as to why he believed Mr. O'Neal was temporarily and totally disabled, nor did he suggest a course of treatment to address Mr. O'Neal's situation. It found Dr. Wahi's conclusions were the most credible of the medical evidence, and mainly corroborated by the progress notes of Dr. Oar. Both Dr. Wahi and Dr. Oar concluded that Mr. O'Neal is unable to return to his former employment, but this is insufficient to indicate that he is temporarily and totally disabled. The Office of Judges concluded that the preponderance of the evidence supports the conclusion that Mr. O'Neal has reached maximum medical improvement, and therefore, it held that he is no longer eligible for temporary total disability benefits. The Board of Review reached the same reasoned conclusions in its decision of January 27, 2012. We agree with the reasoning and conclusions of the Board of Review.

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: November 18, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum