

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LARRY A. McAFEE,
Claimant Below, Petitioner

vs.) No. 100747 (BOR Appeal No. 2043797)
(Claim No. 2002038574)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

K.T. TRUCKING, INC.,
Employer Below, Respondent

FILED
July 19, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated April 26, 2010, in which the Board affirmed a November 10, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of the petitioner's request for a lumbar laminectomy on January 29, 2009, but it reversed the claims administrator's granting of the petitioner's request for various medications on May 21, 2009. The appeal was timely filed by the petitioner, and the Insurance Commissioner filed a response. 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, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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 affirmed the denial of both the requests for a lumbar laminectomy and for various medications. Mr. McAfee argues he is less concerned with the denial of his request for a lumbar laminectomy, but that the requested medication is needed for his “pain and . . . every day functions.” The Office of Judges, however, found Mr. McAfee’s only compensable condition is a lumbar strain, and a lumbar laminectomy is not reasonable and necessary medical treatment for that condition. (Nov. 10, 2009 Office of Judges Order, p. 5.) The Office of Judges also highlighted that two evaluating physicians have found Mr. McAfee to have reached maximum medical improvement. One such evaluator, Dr. P. Mukkamala, submitted the “most detailed and thorough medical evidence of record.” *Id.* Thus, the Office of Judges found it to be the most persuasive and convincing. *Id.* Dr. Mukkamala’s report concluded that all requested treatment be obtained through Mr. McAfee’s private insurance and not workers’ compensation. It also detailed that many of the requested medications were for short term use only, the usage of some had exceeded Rule 20 Guidelines, and others were not even prescribed for the treatment of a lumbar sprain. Accordingly, the Office of Judges reversed the granting on Mr. McAfee’s request for various medications and affirmed the denial of his request for a lumbar laminectomy. The Board of Review reached the same reasoned conclusion in its decision of April 26, 2010.

For the foregoing reasons, we find that the decision of the Board of Review regarding Mr. McAfee’s request for a lumbar laminectomy is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board’s material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of his request for a lumbar laminectomy is affirmed.

Further, we find that the decision of the Board of Review regarding Mr. McAfee’s request for various medications is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision. Therefore, the denial of Mr. McAfee’s request for various medications is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:
Justice Menis E. Ketchum