

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

THOMAS E. BEVERLY,
Claimant Below, Petitioner

vs.) No. 100794 (BOR Appeal No. 2043969)
(Claim No. 2001032918)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

DIVERSIFIED MANAGEMENT, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 9, 2010, in which the Board affirmed a December 22, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 31, 2009 denial of Mr. Beverly's request for a permanent partial disability evaluation regarding impairment from cauda equina syndrome-without mention of neurogenic bladder. The appeal was timely filed by the petitioner, and the West Virginia Office of 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.

FILED

June 9, 2011

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

The Board of Review affirmed the denial of Mr. Beverly's request for a permanent partial disability evaluation. Mr. Beverly argues that, because a nurse review of his claim resulted in a memorandum recommending the addition of neurogenic bladder to his claim, his request for an evaluation should be considered timely. Further, Mr. Beverly asserts that he should not be restricted by the 5 year limitations period for reopening due to the progressive nature of his injury.

The Office of Judges noted that the initial award in this claim was granted by Order dated December 23, 2002. W. Va. Code § 23-4-16(a)(2) requires that reopening requests be filed within 5 years of the date of the initial award in claims in which an award of permanent impairment have been made. The Office of Judges therefore concluded that Mr. Beverly's request is time barred.

Moreover, the Office of Judges noted that, despite the failure to specifically include neurogenic bladder as a compensable condition, "the Claim Administrator's grant of an initial 39% per its Order of December 23, 2002, as well as the subsequent grant of a cumulative 49% permanent partial disability award by earlier decision of this office dated November 16, 2005, included permanent partial disability consideration for the claimant's bladder impairment." (Dec. 22, 2009 Office of Judges Order, p. 4.) The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 9, 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 denial of the petitioner's request for a permanent partial disability evaluation is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh