

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROBERT G. THOMAS,
Claimant Below, Petitioner

vs.) **No. 100879 (BOR Appeal No. 2043856)**
(Claim No. 2008030058)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

BERT WOLFE FORD, INC.,
Employer Below, Respondent

FILED
July 29, 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 June 10, 2010, in which the Board affirmed a November 20, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 7, 2009 Order, which suspended temporary total disability benefits and closed Mr. Thomas's claim on a temporary total disability basis. The appeal was timely filed by the petitioner, and Bert Wolfe Ford, Inc. 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, this Court is of the opinion that this matter 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 Office of Judge's Order, which suspended

temporary total disability benefits and closed Mr. Thomas's claim on a temporary total disability basis. Mr. Thomas notes that Dr. Bruce A. Guberman found that he has not reached maximum degree of medical improvement with regard to his compensable injury. Mr. Thomas further highlights that three separate physicians have stated that he would benefit from additional treatment, namely a spinal cord stimulator.

The Office of Judges considered the evidence of record, which consists of Dr. Guberman's report and Dr. Prasadarao B. Mukkamala's report and deposition testimony. (Nov. 20, 2009 Office of Judges Order, p.2.) The Office of Judges acknowledged that Dr. Guberman found that Mr. Thomas was not at his maximum degree of medical improvement; however, Dr. Guberman's recommendation of a spinal cord stimulator was based upon Mr. Thomas's radicular symptoms, which could not be diagnostically verified. *Id.* at pps. 3-4. Dr. Mukkamala, too, found no diagnostic verification of radiculopathy. *Id.* at p. 4. Thus, Dr. Mukkamala found that a spinal cord stimulator and morphine pump were not indicated. *Id.*

Additionally, Dr. Mukkamala found Mr. Thomas to have reached maximum degree of medical improvement. *Id.* Dr. Guberman also stated that if a spinal cord stimulator and morphine pump were not authorized, then Mr. Thomas would be at his maximum degree of medical improvement. *Id.* Based upon the lack of diagnostic verification of radicular symptoms to justify the need for a spinal cord stimulator and morphine pump and Drs. Mukkamala's and Guberman's reports, the Office of Judges concluded that Mr. Thomas has reached his maximum degree of medical improvement. *Id.* The Office of Judges therefore affirmed the suspension of temporary total disability benefits and closure of Mr. Thomas's claim for temporary total disability benefits. *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision dated June 10, 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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the suspension of temporary total disability benefits and closure of Mr. Thomas's claim on a temporary total disability basis is affirmed.

Affirmed.

ISSUED: July 29, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh