

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**STEPHEN E. NATERNICOLA,  
Claimant Below, Petitioner**

**August 2, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**vs.) No. 101107 (BOR Appeal No. 2044057)  
(Claim No. 2009050917)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER  
Commissioner Below, Respondent**

**and**

**EASTERN ASSOCIATED COAL, LLC,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 10, 2010, in which the Board affirmed a January 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's May 6, 2009 and June 19, 2009 Orders denying additional compensable components and medical benefits. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 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.

In its Order the Office of Judges held the Petitioner failed to prove by a preponderance of the evidence that the neck and cervical region problems are attributable to the June 2008 compensable injury. Petitioner argues that he has provided evidence showing the cervical and neck injuries are attributable to the compensable injury and he is not required to prove the exclusion of all else that may have caused the subsequent injuries. Further, petitioner argues that because the neck and cervical region injury were the normal consequence of the compensable injury, those injuries should be compensable as well.

In its Order affirming the Claims Administrator's denial of additional compensable components and medical benefits, the Office of Judges noted that assigning the cervical issue to the compensable injury is speculative. (January 27, 2010 Office of Judges Order, p. 9). It further noted that evidence on the record, including physician reports and testimony from the treating physician and physical therapist, do not support the theory the cervical injury was caused from treatment of the lumbar injury. *Id.* The Office of Judges also noted prior cervical fractures the claimant had previously attributed to his pain. *Id.* It further opined the cervical surgery was not medically related or reasonably required in the treatment of the lumbar injury. *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of August 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 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 additional compensable components and medical benefits is affirmed.

Affirmed.

ISSUED: August 2, 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