

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**KIMBERLY A. LAMP,
Claimant Below, Petitioner**

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

**vs.) No. 101127 (BOR Appeal No. 2044084)
(Claim No. 2002006188)**

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

and

**CAMDEN-CLARK MEMORIAL HOSPITAL CORP.,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board affirmed an January 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's April 3, 2009 order denying the requested medical benefits. The appeal was timely filed by the petitioner and a response was filed by the OIC. 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 claimant failed to prove by a preponderance of the evidence that the requested medical benefits were medically related and reasonably required. Ms. Lamp argues that the previous surgery is the cause of the current problems, not degenerative disease.

In its Order affirming the Claims Administrator's denial of medical benefits, the Office of Judges noted the referral to the physician requesting the medical benefits was to be under the claimant's regular insurance and not this claim. (January 13, 2010 Office of Judges Order, p. 4). It further noted an August 21, 2006 Office of Judges Order, in which they found the claimant's current problems were due to noncompensable degenerative changes and not the compensable injury in denying a request for lumbar fusion. *Id.* It further opined that while the claimant filed a timely protest, evidence submitted did not establish that the requested treatment is reasonable and necessary in relation to the compensable injury. *Id.* The BOR reached the same reasoned conclusions in affirming the Office of Judges in its decision on August 19, 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 MRI and CT of the lumbar spine is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum