

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

OWEN S. CHANNEL JR., Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100649 (BOR Appeal No. 2043826)
(Claim No. 900039418)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CONSOLIDATION COAL COMPANY,
Respondent**

MEMORANDUM DECISION

Petitioner Owen S. Channel Jr., by M. Jane Glauser, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying authorization for medical benefits. Consolidation Coal Company, by Edward George III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 26, 2010, in which the Board affirmed an October 29, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 22, 2009, and February 9, 2009, Orders denying the medications ReQuip, Lithium, and Adderall. 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.

Mr. Channel suffered an injury to his cervical spine while at work on February 9, 1990, and he subsequently developed major depression as a result of the compensable injury. His treating

physician requested the medications Adderall, Lithium, and ReQuip. On January 22, 2009, and February 9, 2009, the claims administrator denied authorization for the requested medications.

The Office of Judges held that the requested medications were for treatment of non-compensable components of the claim. Mr. Channel disagrees and asserts that he has provided a sufficient medical opinion that the requested medications are medically necessary and reasonable for treatment of his compensable conditions.

In holding that Mr. Channel was not entitled to the requested medical benefits, the Office of Judges noted several previous Office of Judges Orders denying the same medications. Specifically, the Office of Judges noted that previous adjudicators had found that the medications “are not medications for treatment regarding a direct relationship to the work injury or disease and are not properly authorized as part of the compensable claim.” The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of April 26, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the April 26, 2010, Board of Review Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh