

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 23, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DON R. WILLIAMS,
Claimant Below, Petitioner

vs.) **No. 11-0831** (BOR Appeal No. 2045183)
(Claim No. 2006057296)

KELLY PAVING, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Don R. Williams, by John Skaggs, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Kelly Paving, Inc., by Alyssa Sloan, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 21, 2011, in which the Board affirmed a September 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 10, 2009, decision denying Mr. Williams's request to reopen the claim for additional medical treatment. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

On September 15, 2006, Mr. Williams injured his neck, and the claim was held compensable. On September 25, 2007, the claim was closed on an administrative basis because six months had elapsed since the time of last treatment. On September 24, 2009, Mr. Williams filed a request to reopen the claim and requested authorization for office visits with his treating physician, physical therapy, and medication.

In its Order affirming the December 10, 2009, claims administrator's decision, the Office of Judges held that the evidence of record fails to demonstrate that Mr. Williams's request to reopen the claim for additional treatment should be authorized. Mr. Williams disputes this finding and asserts that the evidence of record demonstrates that he requires additional treatment in relation to the September 15, 2006, injury.

The Office of Judges found that the only medical evidence of record that pertains to Mr. Williams's request for additional treatment is his reopening application. The Office of Judges noted that the reopening application lists a diagnosis of cervical sprain and states that Mr. Williams has been experiencing recurring neck pain for two months, but then states that Mr. Williams cannot recall sustaining a new injury or a reinjury. The Office of Judges found that despite the fact that the reopening application stated that clinical notes would follow that further describe Mr. Williams's condition, no further medical evidence was submitted after the date of the reopening application. The Office of Judges further found that there is no evidence of record indicating that Mr. Williams received any treatment during the interval between the closure of the claim and his application for reopening, which was filed approximately two years later. Finally, the Office of Judges found that the evidence of record does not support the conclusion that Mr. Williams's current neck problems are related to the September 15, 2006, compensable injury. The Board of Review reached the same reasoned conclusions in its decision of April 21, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: April 23, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II