

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 14, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JAMES ALBERT BOWERS JR.,
Claimant Below, Petitioner

vs.) **No. 11-0888** (BOR Appeal No. 2045257)
(Claim No. 2002018344)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

NEWTOWN ENERGY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner James Albert Bowers Jr., by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Gary M. Mazezka, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 9, 2011, in which the Board affirmed an October 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 22, 2010, decision denying authorization for a referral to a neurosurgeon. 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.

Mr. Bowers worked in the coal mines for Newton Energy, Inc., as a mine foreman. His claim was held compensable for the following injuries: 726.19, other rotator cuff syndrome, 726.12, bicipital tenosynovitis; 726.2, other affections shoulder region; 836.0, tear medial meniscus knee; 847.0, sprain/strain of neck; and 847.2, sprain/strain of lumbar region. On June, 22, 2010, the claims administrator denied authorization for a referral to a neurosurgeon because of the independent medical examination completed by Dr. P.B. Mukkamala on July 8, 2009.

The Office of Judges concluded that the referral to a neurosurgeon was for lumbar conditions that are not compensable injuries in this claim. On appeal, Mr. Bowers disagrees and asserts that the requested treatment was medically reasonable and necessary and was proven by Mr. Bowers's treating physician who made the request, and explained that a consultation was needed because the MRI of record showed that Mr. Bowers was suffering from a pinched nerve due to bulging discs. The West Virginia Office of Insurance Commissioner maintains that the condition, for which Mr. Bowers requests a referral, is not related to the compensable injury, and that Mr. Bowers has not established by a preponderance of the evidence that he is entitled to the neurosurgeon referral. Dr. Mukkamala performed an independent medical examination and found a 36% whole person impairment from all compensable injuries. Dr. Mukkamala concluded that Mr. Bowers had reached maximum medical improvement for all of his compensable injuries. Dr. Vellaiappan Somasundaram, Mr. Bowers's treating physician, requested authorization for a referral for Mr. Bowers to see a neurosurgeon at Cabell Huntington Back and Spine due to the MRI showing multiple disc bulging and bone spurs, with pinched nerve.

The Office of Judges affirmed the claims administrator's decision relying on Dr. Mukkamala's independent medical examination. The Office of Judges noted that the claim was only compensable for a lumbar sprain and concluded that the referral was for a non-compensable condition. The Board of Review reached the same reasoned conclusions in its decision of May 9, 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: March 14, 2013

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Brent D. Benjamin
Justice Menis E. Ketchum