

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 23, 2013

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

WILLIAM MICHAEL REESE,
Claimant Below, Petitioner

vs.) **No. 11-0945** (BOR Appeal No. 2045199)
(Claim No. 2009086277)

**WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION,**
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner William Michael Reese, by Patrick Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Division of Environmental Protection, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 24, 2011, in which the Board affirmed an October 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 9, 2009, decision closing the claim for temporary total disability benefits. 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. Reese sustained multiple injuries on April 1, 2009, when he slipped and fell at work. On August 25, 2009, Dr. Mukkamala performed an independent medical evaluation and found that because Mr. Reese is currently not able to receive any further treatment as a result of his obesity, he is at maximum medical improvement. On October 7, 2009, Dr. Thaxton performed a records review. She agreed with Dr. Mukkamala's conclusions and found that the medical evidence does not support continued temporary total disability benefits in this case.

In its Order affirming the November 9, 2009, claims administrator's decision, the Office of Judges held that Mr. Reese failed to show that he is entitled to additional temporary total disability benefits. Mr. Reese disputes this finding and asserts that the evidence of record demonstrates that he is entitled to temporary total disability benefits.

West Virginia Code § 23-4-7a (2005) states that temporary total disability benefits terminate after a claimant has reached maximum medical improvement, regardless of whether he has been released to return to work. The Office of Judges found the reports of Drs. Mukkamala and Thaxton, who both found Mr. Reese to be at maximum medical improvement because he is not able to receive further treatment, to be the most persuasive evidence of record. The Board of Review reached the same reasoned conclusions in its decision of May 24, 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 Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum