

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 27, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CLYDE R. STEPHENSON,
Claimant Below, Petitioner

vs.) **No. 11-0948** (BOR Appeal No. 2045287)
(Claim No. 2009070220)

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

and

COLUMBIA GAS TRANSMISSION, CORP.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Clyde R. Stephenson, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Columbia Gas Transmission, Corp., 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 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 17, 2010, and March 22, 2010, decisions closing the claim for temporary total disability benefits, and denying a reopening 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. Stephenson was working for Columbia Gas when he was injured in a work-related vehicle accident. On February 17, 2010, the claims administrator closed the claim for temporary total disability benefits because evidence showing continued disability had not been received. Subsequently, on March 22, 2010, the claims administrator denied a request to reopen the claim for temporary total disability benefits because the evidence did not demonstrate that Mr. Stephenson was suffering from any additional disability than what had been previously considered.

The Office of Judges held that the evidence did not establish that Mr. Stephenson remained temporarily and totally disabled past January 10, 2010. Mr. Stephenson disputes this and asserts that because Dr. Hess's January 10, 2010, evaluation did not contain an impairment rating it was incomplete until the addendum of July 22, 2010, and he is entitled to temporary total disability benefits until July 22, 2010. Columbia Gas maintains that the claim was properly closed for temporary total benefits, and that no evidence indicates that Mr. Stephenson remains temporarily and totally disabled.

Under West Virginia Code § 23-4-7a (2005), temporary total disability benefits are suspended at the earliest of: (a) information that the claimant has reached his/her maximum degree of medical improvement; or (b) has been released to return to work; or (c) has actually returned to work. The Office of Judges noted that Dr. Richards had released Mr. Stephenson to return to work as early as April of 2009. It further noted that Dr. Baisas and Dr. Hess found that Mr. Stephenson had reached maximum medical improvement, on May 13, 2009, and January 10, 2010, respectively.

The Office of Judges noted that during evaluations with both Drs. Baisas and Hess, Mr. Stephenson had no complaints. Additionally, the Office of Judges noted that Dr. Richards, the treating physician, stated on July 9, 2009, that Mr. Stephenson had no complaints, but had appeared to fill out forms. The Office of Judges concluded that the claims administrator was correct to close the claim for temporary total disability benefits, and deny a reopening of the claim for temporary total disability benefits. 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: March 27, 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