

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 27, 2014

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

SAMUEL J. PERRY,
Claimant Below, Petitioner

vs.) **No. 13-0338** (BOR Appeal No. 2047624)
(Claim No. 2008002858)

SWVA, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Samuel J. Perry, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. SWVA, Inc., by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 4, 2013, in which the Board affirmed an August 20, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 28, 2011, decision denying authorization for the medications Remeron and Klonopin. 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. Perry, a maintenance worker for SWVA, Inc., injured himself on July 19, 2007, when he was burned in a flash fire. Mr. Perry's claim was held compensable. Thereafter, Mr. Perry sought medical treatment from his family physician, Natavoot N. Chongswatdi, M.D., because he was experiencing flashbacks and depressive episodes. Dr. Chongswatdi prescribed citalopram hydrobromide, clonazepam, and temazepam and requested that Mr. Perry see a psychiatrist. Mr. Perry was examined by Bobby Miller, M.D., on November 27, 2007. Dr. Miller

diagnosed post-traumatic stress disorder and prescribed Zoloft and Seroquel. Mr. Perry submitted a request that post-traumatic stress disorder be added as a compensable condition. Based on Dr. Miller's opinion post-traumatic stress disorder was added as a compensable condition of the claim. At the first psychiatric examination, Dr. Miller opined that Mr. Perry would need medication for one year. Mr. Perry then reported to Ann H. Phenco, M.D., for treatment on September 29, 2011. Based upon that examination Dr. Phenco sent in a request that Remeron 30 mg and Klonopin 1mg be approved for Mr. Perry. Dr. Phenco's request does not contain and explanation of why the medications are necessary. The request also does not have an addendum or accompanying report explaining the findings.

The Office of Judges noted that Mr. Perry has reported to Dr. Miller on several occasions. Dr. Miller performed various tests on Mr. Perry. At the conclusion of the testing, Dr. Miller found that Mr. Perry had improved in the area of his mood disorder but had psychiatric problems unrelated to his compensable injury. Dr. Miller's report also directly addressed the issue of whether Remeron and Klonopin are medically related and necessary to treat his compensable condition. In Dr. Miller's opinion neither drug was needed. Dr. Miller also opined that other drugs would work better for Mr. Perry. Finally, Dr. Miller noted that cessation of Klonopin would most likely have a beneficial effect on Mr. Perry, because it would help his sleep problem. The Office of Judges weighed Dr. Phenco's bare-bone request to Dr. Miller's well-reasoned independent medical examination and determined Dr. Miller's report was more credible and reliable. Accordingly the Office of Judges affirmed the claims administrator's decision to deny medical authorization for Remeron and Klonopin. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the findings of the Office of Judges and the conclusion of the Board of Review. Dr. Miller's report is credible and well-reasoned. The only evidence that would tend to show Mr. Perry should be taking Remeron and Klonopin is the request of Dr. Phenco. Dr. Phenco did not provide any explanation for why the medications were necessary. Mr. Perry has not submitted sufficient credible evidence to warrant a finding that Remeron and Klonopin are medically necessary to treat Mr. Perry's post-traumatic stress disorder.

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: June 27, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II