

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Michael L. Casto,
Petitioner**

**vs.) No. 100634 (BOR Appeal No. 2043704)
(Claim No. 2004006189)**

**West Virginia Office of Insurance Commissioner
and All Crane & Equipment Rental,
Respondents**

FILED
July 12, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 22, 2010, in which the Board affirmed a September 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claim administrator's denial of the petitioner's request for a psychiatric referral to Dr. Tara F. Ray, Psychiatrist. The appeal was timely filed by the petitioner, and a response was filed by the Commissioner. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review affirmed the denial of the psychiatric referral and treatment. Mr. Casto had argued that his major depressive disorder, pain disorder and adjustment disorder with anxiety is related to his occupational injury, and that he is entitled to medical treatment for the alleged residual compensable conditions. The Office of Judges agreed with the claims administrator that there was insufficient credible medical evidence to support the necessity for a psychiatric referral. Specifically, the OoJ noted that Dr. Timothy Deer, the treating physician, did not comply with the requirements of 85 CSR 20-12.4, which provides:

“[s]ervices may be approved to treat psychiatric problems only if they are a direct result of the compensable injury. As a prerequisite to coverage, the treating physician of record must send the injured worker for a consultation with a psychiatrist who shall examine the injured worker to determine (1) if a psychiatric problem exists; (2) whether the problem is directly related to the compensable condition; and (3) if so, the specific facts, circumstances and other authorities relied upon to determine the causal relationship. The psychiatrist shall provide this information, and all information required in § 8.1 of this Rule in his or her report. Failure to provide this information shall result in the denial of the additional psychiatric diagnosis.”

The OOJ also noted that the “proper procedure under W. Va. Code R. § 85-20-12.4 would be for the claimant’s treating physician to request for an additional diagnosis of a psychiatric component to be included under this claim number. Thereafter, should the psychiatric condition be accepted as compensable, treatment could then be authorized for the claimant.” (Sept. 30, 2009 Office of Judges Order, p. 5). Thus, Claimant’s referral request was denied “because at the present time a psychiatric component is not compensable under this claim number and treatment should therefore not be authorized.” The Board of Review adopted these findings of fact and conclusions of law and affirmed the decision. The requirements of Rule 20 have not been met.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. The BOR decision dated April 22, 2010, is affirmed.

Affirmed.

ISSUED: July 12, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum