

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DOVIE LYCAN, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100672 (BOR Appeal No. 2044148)
(Claim No. 2009084283)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ALLIED BARTON SECURITY, Respondent

MEMORANDUM DECISION

Petitioner Dovie Lycan, by Anne Wandling, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits, and denying temporary total disability benefits. Allied Barton Security, by Jeffrey Brannon, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated May 10, 2010, in which the Board affirmed a January 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 22, 2009, and August 17, 2009, Orders denying the requested medical benefits, denying temporary total disability benefits, and closing the claim for temporary total disability benefits. 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, this Court is of the opinion that this matter 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.

In this case, the petitioner was working as a security guard for Allied Barton Security when she suffered a cervical and lumbosacral strain. On July 22, 2009, the claims administrator denied a

request for a back brace, functional capacity evaluation, physical therapy, and temporary total disability benefits. The claims administrator closed the claim for temporary total disability benefits on August 17, 2009. The claims administrator based its decisions on the evaluation of Dr. Levin.

The Office of Judges held that the requested medical benefits were not medically related or reasonably required for the treatment of the compensable injury, and that the petitioner was no longer temporarily and totally disabled as of July 14, 2009. The petitioner disagrees and asserts that the opinion of the treating physician is more reliable than the independent medical evaluator. The petitioner argues that she is entitled to the requested medical and temporary total disability benefits.

In affirming the claims administrator's Orders, the Office of Judges relied on the independent medical evaluation by Dr. Levin. According to Dr. Levin, the petitioner as of July 13, 2009, had reached maximum medical improvement and the remaining symptoms were a result of the well-documented preexisting conditions. Based on this opinion, the Office of Judges found the requested medical benefits were not medically related or reasonably required for the treatment of the compensable injury. The Office of Judges also noted that under West Virginia Code of State Rules § 85-20-37.5, 37.8 (2006), the estimated duration of care for cervical and lumbosacral strains spans from one to four weeks. Additionally, the Office of Judges noted that the residual disability the petitioner suffered was attributable to preexisting foraminal stenosis and spondylolisthesis. The Board of Review reached the same reasoned conclusion in its Order of May 10, 2010.

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 Board of Review's May 10, 2010, Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum