

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ANDREW H. HOLLIDAY, Petitioner

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

vs.) No. 100675 (BOR Appeal No. 2043759)
(Claim No. 2007212194)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ALEX ENERGY, INC., Respondent

MEMORANDUM DECISION

Petitioner Andrew H. Holliday, by Reginald Henry, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits and additional compensable components. Alex Energy, Inc., by Sean Harter, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 26, 2010, in which the Board affirmed an October 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 30, 2009, Orders denying the requested additional compensable components and medical 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, Mr. Holliday was employed as a roof bolter with Alex Energy, Inc. He was injured at work on August 20, 2006, when he hit his head on a belt hanger. The claim was held compensable for a disturbance of skin sensation, and a cervical disc displacement. The claims

administrator on March 30, 2009, denied a request to add cervical sprain, degeneration of cervical intervertebral disc, brachial neuritis or radiculitis, and thoracic sprain as compensable conditions in the claim. On March 30, 2009, the claims administrator also denied a request to authorize forty-eight additional chiropractic treatments.

The Office of Judges held that the preponderance of the evidence failed to establish that the requested additional compensable components were injuries received in the course of and resulting from the petitioner's employment, and that the requested forty-eight chiropractic treatments were medically related and reasonably required treatment of the compensable injury. Mr. Holliday disagrees and asserts that the Board of Review was clearly wrong in denying the additional compensable components and medical benefits. He argues that the most complete explanation regarding the actual injury was from Dr. Flescher and his medical opinion is more reliable.

In its Order affirming the claims administrator's denial of additional compensable components and medical benefits, the Office of Judges noted that while Dr. Flescher did provide a complete explanation of the actual injury, his report was two and a half years after the injury. In affirming the denial of the additional compensable components, the Office of Judges also noted that this was the first mention of a thoracic component, and radiculopathy had been precluded by an EMG. In affirming the denial of the forty-eight additional chiropractic treatments, the Office of Judges noted that another chiropractor found that the request was arbitrary. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of April 26, 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 Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum

Justice Brent D. Benjamin, Disqualified