

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

**TIMOTHY K. COLLINS,**  
**Claimant Below, Petitioner**

**vs.) No. 100708 (BOR Appeal No. 2043935)**  
**(Claim No. 2008000327)**

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

**and**

**COCHRAN DENNIS/COCHRAN CARL,**  
**Employer Below, Respondent**

**FILED**

**July 15, 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 Final Order dated April 29, 2010, in which the Board reversed a December 15, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's denial of reopening of Mr. Collins's claim for modification of benefits on May 1, 2009. The appeal was timely filed by the petitioner, and Cochran Dennis / Cochran Carl filed a response. 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 parties' submissions 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 reversed the December 15, 2009, Office of Judges' Order, which reopened Mr. Collins's claim for consideration of benefits regarding dizziness/vertigo,

added dizziness/vertigo as a compensable condition, ordered provision of vestibular rehabilitation, and awarded temporary total disability benefits to Mr. Collins. Mr. Collins argues that, per *Harper v. State Workmen's Comp. Comm'r*, 160 W. Va. 364, 234 S.E.2d 779 (1977), he has established a *prima facie* case justifying the inference that there has been a progression or aggravation of his condition.

The Board of Review concluded that the only issue before the Office of Judges was whether the evidence warranted a reopening of Mr. Collins's claim for consideration of temporary total disability benefits. It held that "the evidence does not establish that the claimant was temporarily and totally disabled due to a compensable component in the claim," which were lumbosacral sprain, neck sprain, and thoracic sprain. (April 29, 2010 Board of Review Order, p. 4.) On January 11, 2008, and January 22, 2008, the claims administrator denied Mr. Collins's requests for the addition of dizziness/vertigo as a compensable condition. Mr. Collins did not protest these orders.

The Board of Review held that the claims administrator's decision was correct. The claims administrator, in turn, found that "[t]here is no aggravation or progression and no new factors or conditions other than what has previously been considered. The closing of the claim for temporary total disability benefits was affirmed by the Administrative Law Judge Orders of 11/06/2008 and 02/11/2009." In short, Mr. Collins was found to have reached maximum medical improvement with respect to the compensable components of his claim. Moreover, Mr. Collins's requests for the addition of dizziness/vertigo as a compensable component had been previously considered and denied.

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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. Therefore, the denial of Mr. Collins's claim for reopening is affirmed.

Affirmed.

ISSUED: July 15, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum

