

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RICHARD J. HARRIS,
Claimant Below, Petitioner

vs.) No. 100710 (BOR Appeal No. 2043755)
(Claim No. 980039691)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

BJM COAL COMPANY,
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 22, 2010, in which the Board affirmed a November 5, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of authorization for a left L5-S1 lumbar laminectomy on June 20, 2008. The appeal was timely filed by the petitioner, and the Insurance Commissioner 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 affirmed the denial of Mr. Harris's request for a left L5-S1 lumbar laminectomy. Mr. Harris argues that the claims administrator's assertion that the

request was denied because it had been previously denied is incorrect. The previous denial was for a right lumbar laminectomy whereas the current request is for a left lumbar laminectomy. Further, Mr. Harris argues that the claims administrator failed to address whether his condition was preventing recovery or whether the condition was an aggravation of the compensable injury.

The Office of Judges, however, noted that Mr. Harris's only compensable condition is a lumbar sprain. It determined that "the medical evidence of record fails to establish a causal connection between the claimant's compensable condition and the request for a left L5-S1 laminectomy." (Nov. 5, 2009 Office of Judges Order, p. 4.) Instead, the Office of Judges found that the evidence makes clear "that the claimant suffers from degenerative changes of the lumbar spine, which is not an accepted condition in this claim." *Id.* Thus, it concluded that a preponderance of the evidence suggests that there is no causal connection between Mr. Harris's lumbar sprain and his request for a laminectomy. The Board of Review reached the same reasoned conclusion in affirming the Board of Review in its decision of April 22, 2010.

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. Therefore, the denial of the petitioner's request for left L5-S1 laminectomy 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