

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MICKEY D. SHREWSBURY,
Claimant Below, Petitioner

vs.) No. 100739 (BOR Appeal No. 2043780)
(Claim No. 2008043989)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

A T MASSEY COAL COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated May 12, 2010, in which the Board affirmed a November 9, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Shrewsbury's request to add lumbar spine as a compensable component on July 8, 2008. It also affirmed the denial of Mr. Shrewsbury's request to add lumbar sprain/strain and cervical herniated disc on July 21, 2008. The Office of Judges, however, also modified the July 21, 2008 order to deny the addition of a lumbar herniated disc as references to a cervical herniated disc were simply in error. The appeal was timely filed by the petitioner, and A T Massey Coal Company, Inc. 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

FILED

June 9, 2011

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

Appellate Procedure.

The Board of Review affirmed the denial of Mr. Shrewsbury's requests to add lumbar spine, lumbar sprain/strain, and lumbar herniated disc as compensable conditions. Mr. Shrewsbury argues that the denial of these additional diagnoses was wrong because the Board of Review and Office of Judges misconstrued prior records seemingly indicating that he was experiencing symptoms in his lumbar spine prior to his compensable injury and because diagnostic testing supports a finding that his herniated lumbar disc is related to his compensable injury.

The Office of Judges explained that the additional diagnoses were originally rejected because Mr. Shrewsbury only complained of a twisted left knee at the time of his injury. He did not report back pain until two weeks following his knee injury. Further, the doctor to whom Mr. Shrewsbury initially reported the back pain, Michael Kominsky, D.C., stated that Mr. Shrewsbury's injury occurred while he was lifting a ladder. This is refuted by Mr. Shrewsbury's own testimony. Moreover, Chiropractor Kominsky indicated that Mr. Shrewsbury experienced back pain immediately. The Office of Judges noted that this, too, is contrary to Mr. Shrewsbury's own statements as well as the medical records.

Furthermore, Mr. Shrewsbury's medical records reveal that he was experiencing low back issues prior to his compensable injury. The records indicate that Mr. Shrewsbury was experiencing pain radiating into his lumbar spine and left hip and leg at least through May 2007, approximately one year prior to his compensable injury. Upon consideration of these facts, the Office of Judges found Mr. Shrewsbury's lumbar condition unrelated to his compensable knee injury. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of May 12, 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 additional compensable components is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman
Justice Robin Jean Davis
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum
Justice Brent D. Benjamin disqualified.