

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

**JAMES SLONE,**  
**Claimant Below, Petitioner**

**vs.) No. 100759 (BOR Appeal No. 2043794)**  
**(Claim No. 2009060484)**

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

**and**

**SPARTAN MINING COMPANY,**  
**Employer Below, Respondent**

**FILED**

**July 19, 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 June 1, 2010, in which the Board reversed a November 4, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's denials of the petitioner's requests for a reopening for payment of temporary total disability benefits, a reopening of the claim for additional consideration of permanent partial disability benefits, and an authorization for a pain management clinic evaluation on April 1, 2009. The appeal was timely filed by the petitioner, and Spartan Mining Company 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 Office of Judges's decision ordering a referral to a pain management clinic and granting temporary total disability benefits. Mr. Slone argues simply that "the evidence submitted by his treating physicians clearly reflects a work-related injury for the date of 09-15-2008." Therefore, Mr. Slone claims that he is entitled to receive medical attention as needed, temporary total disability benefits, and permanent partial disability benefits.

The Board of Review, however, found that Mr. Slone's request for benefits is due not to his compensable lumbar sprain/strain, but instead due to preexisting and unrelated back conditions. (June 1, 2010 Board of Review Order, p. 2.) Mr. Slone had been experiencing back pain for over one year prior to his compensable September 15, 2008 back injury. (Nov. 4, 2009 Office of Judges Order, p. 2.) Thus, the referral to a pain management clinic was not necessitated by Mr. Slone's lumbar sprain/strain.

Further, with respect to his compensable injury, Mr. Slone was found to have reached maximum medical improvement on January 2, 2009. Mr. Slone's Claim Reopening Application specifically noted that it was not based upon the existence of facts not previously considered. The doctor who completed the physician's portion of the form, Dr. Anbu Nadar, however, also failed to check "yes" or "no" as to whether Mr. Slone had sustained a progression in or aggravation of his compensable condition. Nonetheless, Mr. Slone's medical records from the same time in which his reopening application was submitted reveal that his condition has remained "unchanged." Consequently, there is no evidentiary basis for the reopening of his claim, as necessitated by West Virginia Code § 23-5-3.

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 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. Slone's requests for authorization for a pain management clinic evaluation and for a reopening of his claim on a temporary total disability basis and on a permanent partial disability basis is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Thomas E. McHugh

Judge O. C. Spaulding, temporarily assigned

DISSENTING:

Chief Justice Margaret L. Workman

Justice Menis E. Ketchum

DISQUALIFIED:

Justice Brent D. Benjamin