

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

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

**RONNIE R. MOONEY,
Claimant Below, Petitioner**

**vs.) No. 100803 (BOR Appeal No. 2043902
(Claim No. 200004866)**

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

and

**U.S. STEEL MINING CO., LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 3, 2010, in which the Board affirmed a December 14, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of medical benefits, namely, the prescriptions Flexeril and Lortab. The appeal was timely filed by the petitioner and a response was filed by U.S. Steel Mining Co., LLC. 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, response, 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.

This appeal stems from an injury to Mr. Mooney on July 10, 1999 at which time Mr. Mooney suffered a back injury. Thereafter, Mr. Mooney sought treatment from Dr. Robert P. Kropac who prescribed Flexeril and Lortab from that date until the May 5, 2009, Claims Administrator Order which denied further approval of the medications as Mr. Mooney had reached maximum medical improvement. Mr. Mooney asserts the medications are reasonably necessary for the treatment of his continued complaints of pain and that alternative methods of treating the pain have been ineffective. Doctor Kropac further opined the medications allowed Mr. Mooney to function at a higher capacity than other methods of treatment. The Office of Judges relied upon the deposition testimony of Dr. Kropac, noting that Dr. Kropac's records were devoid of any indication that alternative treatments were pursued during the course of treatment. (December 14, 2009 Office of Judges Order, p. 7). The Office of Judges further noted that while Dr. Kropac asserted there were no alternative treatment options both Drs. J. K. Lilly and P. B. Mukkamala suggested alternative medications. *Id.*, p. 8. The Office of Judges, too, found no basis for further approval of the medications, Flexeril and Lortab, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of June 3, 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 medical benefits for the medications, Flexeril and Lortab is affirmed.

Affirmed.

ISSUED: July 21, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh