

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

QUENTIN T. GODDARD,
Claimant Below, Petitioner

vs.) No. 100809 (BOR Appeal No. 2043701)
(Claim No. 2003053374)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

CSX HOTELS, INC.,
Employer Below, Respondent

FILED
July 25, 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 3, 2010, in which the Board affirmed an October 7, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 14, 2007 denial of Mr. Goddard's request for epidural facet injections. The appeal was timely filed by the petitioner, and CSX Hotels, 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 Appellate Procedure.

The Board of Review affirmed the denial of Mr. Goddard's request for epidural facet

injections. Mr. Goddard sustained a work-related back injury on May 12, 2003, and he contends that he continues to experience back pain. His claim was held compensable for lumbar sprain. Mr. Goddard states that the necessity of the requested epidural facet injections is evidenced by the fact that three separate physicians, Dr. Debra Sam, Dr. Rajesh Patel, and Dr. James Vascik, believe his pain could be alleviated by the injections.

The Office of Judges noted that Dr. Vascik's examination revealed a mild bulge at L4-5, which would be normal for a 35-year-old and even more so for someone of Claimant's age, 52 years old at the time of the evaluation. (Oct. 7, 2009 Office of Judges Order, p. 2.) Dr. Patel attributed Claimant's pain to an annular tear. *Id.* Finally, Dr. Sams's recommendation is based upon the recommendation of Dr. Patel. *Id.* Thus, the Office of Judges acknowledged the need for the requested treatment, but it concluded that Claimant is only entitled to treatment for accepted compensable conditions, here a lumbar sprain. *Id.* at p. 4. Because the injections are necessary to treat Claimant's annular tears and/or herniated discs, the Office of Judges could not authorize epidural facet injections as this treatment is not necessary to treat an accepted compensable condition. *Id.* at 4-5. The Board of Review reached the same reasoned conclusion 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 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 epidural facet injections is affirmed.

Affirmed.

ISSUED: July 25, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum