

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

DEAN E. CWALINSKI,
Claimant Below, Petitioner

vs.) No. 100828 (BOR Appeal No. 2043946)
(Claim No. 2005009921)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

CONSOLIDATION COAL COMPANY,
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 November 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 20, 2009 Order denying authorization for additional chiropractic treatment. The appeal was timely filed by the petitioner, and a response was filed by Consolidation Coal Company. 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. Cwalinski's treating chiropractor's request for additional chiropractic treatment. In arguing that the requested treatment is

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July 25, 2011

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medically necessary, Mr. Cwalinski argues that his medical records document continued back pain and concurrent need for treatment.

The Office of Judges, however, first noted that three evaluating physicians have found that Mr. Cwalinski had reached maximum medical improvement. (Nov. 30, 2009 Office of Judges Order, p. 4.) “Maximum medical improvement” is defined as “a condition that has become static or stabilized during a period of time sufficient to allow optimal recovery, and one that is unlikely to change in spite of further medical or surgical therapy.” W. Va. Code R. § 85-20-3.9.

Further, the requested treatment exceeds treatment guidelines set forth in W. Va. Code R. § 85-20-46. *Id.* at p. 4-5. Although treatment outside these guidelines may be authorized where medically reasonable in extraordinary cases, a claimant must establish this by a preponderance of the evidence, which includes but is not limited to “detailed and documented medical findings, peer reviewed medical studies, and the elimination of causes not directly related to a compensable injury or disease.” W. Va. Code R. § 85-20-4.1. Mr. Cwalinski failed to present evidence that would satisfy these documentation requirements. (Nov. 30, 2009 Office of Judges Order, p. 5.) For these reasons the Office of Judges denied Mr. Cwalinski’s request for additional chiropractic treatment, and 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 additional chiropractic treatment 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