

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

WILLIE D. ALDRIDGE,
Claimant Below, Petitioner

vs.) No. 100869 (BOR Appeal No. 2044085)
(Claim No. 2002049368)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

ROCKSPRING DEVELOPMENT, INC.,
Employer Below, Respondent

FILED

July 29, 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 17, 2010, in which the Board affirmed a January 14, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 26, 2009 Order denying authorization for the medications Cyclobenzaprine, Naproxen, and Gabentin and denying authorization for an MRI and EMG/NCS. The Office of Judges's January 14, 2010 Order also affirmed the claims administrator's March 10, 2009 Order, which denied authorization for the same medications and studies requested and denied in the February 26, 2009 claims administrator's Order. The appeal was timely filed by the petitioner, and a response was filed by Rockspring Development, Inc.. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. 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. Aldridge's request for the prescription medications Cyclobenzaprine, Naproxen, and Gabentin, and it affirmed the denial of Mr. Aldridge's request for an MRI and EMG/NCS. Mr. Aldridge argues that his treating physician, Dr. Marietta Babayev, has expressed the relatedness of the requested medication and studies to his compensable injury, a lumbar sprain that occurred in a March 16, 2002 work-related fall.

The Office of Judges, however, found that a preponderance of the evidence suggests that Mr. Aldridge's current symptoms and consequential purported need for the medications and studies stems from his non-compensable degenerative disc disease. (Jan. 14, 2010 Office of Judges Order, p. 6.) Dr. Marsha Lee Bailey examined Mr. Aldridge and tied his current symptoms to his degenerative changes rather than his compensable injury. *Id.* Dr. R. L. Short, Dr. David L. Weinsweig, and Dr. Joseph E. Fernandes similarly document Mr. Aldridge's preexisting degenerative changes. *Id.* Finding that the requested medications are related to Ms. Aldridge's current symptoms, which, in turn, are related to non-compensable degenerative changes, the Office of Judges affirmed the denial of the requested medications. *Id.*

For these same reasons, the Office of Judges affirmed the denial of the requested studies. *Id.* Additionally, Mr. Aldridge was found to have reached his maximum degree of medical improvement as early as November 21, 2002, which was a finding found by 3 subsequent evaluators. Therefore, because Mr. Aldridge has reached maximum medical improvement from his compensable injury and his current symptoms are related to his degenerative changes, the requested studies to determine whether Mr. Aldridge has radiculopathy is not related to his compensable 2002 lumbar sprain, but rather to his non-compensable degenerative changes. *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 17, 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 denials of Mr. Aldridge's request for certain medication and medical testing is affirmed.

Affirmed.

ISSUED: July 29, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh