

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

WILLIE D. ALDRIDGE,
Claimant Below, Petitioner

vs.) No. 100873 (BOR Appeal No. 2044088)
(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 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 9, 2008 Order, which denied a reopening of Mr. Aldridge's claim on a temporary total disability basis. The appeal was timely filed by the petitioner, and Rockspring Development, 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, this Court is of the opinion that this matter 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 Office of Judge's Order, which denied a reopening

of Mr. Aldridge's claim on a temporary total disability basis. Mr. Aldridge acknowledges that he has been found to have reached maximum degree of medical improvement, but he states that his treating physician, Dr. Marietta Babayev, has noted pain radiating down his legs and into hips as well as occasional sharp pain into his groin. Mr. Aldridge submits that this evidences a progression of his injury and concurrent entitlement to a reopening of his claim.

The Office of Judges first noted that Mr. Aldridge's current pain complaints are not different from those expressed in 2002. (Jan. 13, 2010 Office of Judges Order, p.6.) Even in spite of these continued complaints of pain, Mr. Aldridge was found to have reached maximum degree of medical improvement. *Id.* As the reports of six separate physicians document Mr. Aldridge's complaints of pain, the Office of Judges found that Dr. Babayev's note fails to demonstrate a change in or progression of Mr. Aldridge's condition. *Id.*

Rather, the Office of Judges noted that Mr. Aldridge's preexisting degenerative changes are well-documented, and these degenerative changes were found to be the cause of Mr. Aldridge's continued back pain. *Id.* Thus, the Office of Judges found that the evidence failed to demonstrate a progression or aggravation and consequently affirmed the denial of Mr. Aldridge's request for a reopening. *Id.* at p. 7. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision dated 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 denial of Mr. Aldridge's request for a reopening on a temporary total disability basis 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