

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JACKIE R. REPASS,
Claimant Below, Petitioner

August 5, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100905 (BOR Appeal No. 204420)
(Claim No. 2008013077)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

EASTERN ASSOCIATED COAL, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 28, 2010, in which the Board affirmed a February 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of authorization for the medications, Lyrica, Fiorocet, and Naprosyn. The appeal was timely filed by the petitioner and a response was filed by the Eastern Associated Coal, 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.

Mr. Repass asserts the Board of Review improperly denied authorization for the medications Lyrica, Fiorocet, and Naprosyn as the medical records support the continued authorization of the medications. Eastern Associated Coal asserts the relevant medical records do not support the continued authorization of the medications as Mr. Repass' treating physician failed to follow the proper procedures for continued authorization of the medications.

The Office of Judges determined the instant medications were not supported by the relevant medical records. (February 3, 2010 Office of Judges Order, p. 4). It further found Dr. Chenault's report indicates the instant medications should be discontinued and that Mr. Repass' treating physician failed to properly document the continued necessity of the medications. *Id.* Additionally, it found Mr. Repass was prescribed some of the medications for conditions unrelated to the compensable injury and further that Mr. Repass did not have the disease for which Lyrica is indicated. *Id.* The Office of Judges, too, found no basis for further authorization of the medications or for disputing the Claims Administrator's Order. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 28, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provisions, 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 authorization of the medications, is affirmed.

Affirmed.

ISSUED: August 5, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum