

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LEROY PHILIP MULLINS, Petitioner

October 28, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100948 (BOR Appeal No. 2044005)
(Claim No. 970011650)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BETHENERGY MINES, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated June 29, 2010, in which the Board affirmed a December 17, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's September 5, 2008, Order holding open wound of the forehead, uncomplicated as the sole compensable condition, and added disturbance of skin sensation as a compensable condition. The appeal was timely filed by the petitioner and a response was filed by the West Virginia Office of Insurance Commissioner. 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 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.

In its Order, the Office of Judges held that Mr. Mullins failed to present sufficient evidence to warrant the compensability of injury to head, unspecified; concussion/loss of consciousness; headaches; paresthesia; fracture of other facial bones; unspecified hearing loss; tinnitus, unspecified; and other general symptoms. Mr. Mullins disputes this finding

and asserts that five physicians and one psychologist agree that he suffered from these additional conditions and requires treatment, testing, and evaluation of these conditions.

The Office of Judges found that Mr. Mullins's loss of sensation on the left side of his face could be part of the original injury, based upon the location of the nerve with disturbed sensation. (December 17, 2009, Office of Judges Order, p. 9). It also found that there is no persuasive evidence in the record to indicate that any of the other conditions for which Mr. Mullins reports symptoms are causally related to his original injury. Additionally, Mr. Mullins is not entitled to the temporary total disability benefits he requested in his petition based upon the Office of Judges' finding that the claim is not compensable. The Board of Review reached the same reasoned conclusion in its decision of June 29, 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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: October 28, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum