

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 28, 2011

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

BOBBY HALL, Petitioner

**vs.) No. 100950 (BOR Appeal No. 2044026)
(Claim No. 2007029118)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GEMARK SERVICES OF WEST VIRGINIA, 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 January 19, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 24, 2009, denial of Mr. Hall's request to add lumbar sprain/strain as a compensable condition and refer him to a specialist. The appeal was timely filed by the petitioner. 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. Hall had not presented sufficient evidence to establish that his onset of back pain on September 11, 2008, was causally connected to the injury he sustained on September 11, 2007. Mr. Hall disputes this finding, and submits for consideration the reports of Dr. Steven O'Saile, which state that his back pain could be caused by residual symptoms related to his injury on September 11, 2007.

In its Order affirming the claims administrator's decision that the diagnosis of lumbar sprain/strain was too far removed from the injury both physically and chronologically, the Office of Judges found that at the time of Mr. Hall's September 11, 2007, injury, diagnostic tests revealed degenerative changes of the spine, and that these changes could be responsible for his back pain. (January 19, 2010, Office of Judges Order, p. 3). Additionally, the Office of Judges found that Dr. O'Saile stated in his deposition that he did not have an opinion as to whether Mr. Hall's back pain was caused by his injury on September 11, 2007. *Id.* 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 denial of the petitioner's request for lumbar sprain/strain to be added as a compensable condition and referral to a specialist is affirmed.

Affirmed.

ISSUED: October 28, 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