

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 28, 2011

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

ROBERT LEMASTERS, Petitioner

**vs.) No. 100962 (BOR Appeal No. 2043987)
(Claim No. 2005010682)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CENTURY ALUMINUM OF WEST VIRGINIA, INC.,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated July 9, 2010, in which the Board affirmed a December 7, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 7, 2008, decision denying Mr. LeMasters's request for a neuropsychological evaluation. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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, based upon the weight of the evidence in the record, Mr. LeMasters is not entitled to a neuropsychological evaluation. Mr. LeMasters disputes this finding and points out that multiple medical reports in the record mention the possibility of him undergoing a neuropsychological evaluation.

The Office of Judges relied on the reports of Dr. Weise, a psychiatrist who examined Mr. LeMasters three times. (December 7, 2009, Office of Judges Order, p. 3-4). The Office of Judges noted that Dr. Weise followed Mr. LeMasters's improvement, and in fact did not declare him at maximum medical improvement until his last examination. *Id.* The Office of Judges also noted that Dr. Weise never recommended a neuropsychological evaluation. *Id.* at 4. It specifically found that the opinions of Dr. Weise outweighed the evidence submitted by Mr. LeMasters. *Id.* at 3. The Board of Review reached the same reasoned conclusion in its July 9, 2010, Order.

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 a neuropsychological evaluation is affirmed.

Affirmed.

ISSUED: October 28, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Menis E. Ketchum

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin