

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

McELROY COAL COMPANY,
Employer Below, Petitioner

vs.) No. 100984 (BOR Appeal No. 2044282)
(Claim No. 2008033274)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

JAMES HUNT,
Claimant Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated July 15, 2010, in which the Board affirmed a March 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's August 7, 2009 Order, which denied a reopening of Mr. Hunt's claim on a temporary total disability basis. The Office of Judges reopened the claim and granted Mr. Hunt temporary total disability benefits from April 27, 2009 through September 10, 2009. 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 Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. 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.

The Board of Review affirmed the Office of Judge's Order, which reopened Mr.

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Hunt's claim and granted him temporary total disability benefits from April 27, 2009 through September 10, 2009. Mr. Hunt sustained a fractured left tibia and fibula on February 19, 2008, which necessitated seven surgeries. After returning to work on October 25, 2008, he worked until April 27, 2009 when his treating physician, Dr. Gregory Altman, took Mr. Hunt off work again due to Mr. Hunt's complaints of pain over his tibia, which was radiating down his leg and into his foot. Dr. Altman related this pain to compartment pain syndrome, either reflex sympathetic dystrophy or nerve pain from Mr. Hunt's compartment muscular injury. Dr. Altman noted that this "is very common."

McElroy Coal Company argues that Mr. Hunt's disabling condition is compartment pain syndrome, which is not a compensable condition. Mr. Hunt's only two compensable conditions are tibia and fibula fractures, and he has not attempted to add compartment pain syndrome as a compensable condition; therefore, McElroy Coal Company argues that he is not entitled to benefits for that condition.

With regard to McElroy Coal Company's argument that Mr. Hunt's disabling condition has not been held compensable, the Office of Judges cited West Virginia Code § 23-5-13, which provides that claims will not be denied based on technicalities. (March 15, 2010 Office of Judges Order, p. 5.) Rather, Mr. Hunt's claim was held compensable for a crush injury, and a common component of this type of injury is compartment pain syndrome. *Id.* Because Mr. Hunt had returned to work but later developed pain that necessitated being taken off work, and because his treating physician related this pain to his compensable condition, the Office of Judges found that Mr. Hunt had established an aggravation or progression of his compensable injury. *Id.* at pp. 5-6. This entitled Mr. Hunt to temporary total disability benefits. *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of July 15, 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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the reopening of Mr. Hunt's claim for temporary total disability benefits 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