

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

SHIRLEY SNYDER, Petitioner

January 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 101102 (BOR Appeal No. 2044128)
(Claim No. 2001018950)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BAYER CORPORATION, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 10, 2010, in which the Board affirmed a January 20, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 8, 2009, denial of Ms. Snyder's request to reopen her claim for a psychiatric permanent partial disability impairment 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 a psychiatric condition is not a compensable component of the instant claim, and that Ms. Snyder has failed to demonstrate an aggravation or progression of her compensable injury. Ms. Snyder disputes this finding and asserts that, per W. Va. Code R. § 85-20-6.6 (2004), the claims administrator has

recognized the relationship of depression to the compensable injury through the continued authorization of the use of antidepressants in the instant claim.

The Office of Judges based this decision on W. Va. Code R. § 85-20-12.4 (2004), which provides that before coverage can be authorized for a psychiatric condition, the treating physician must first send the injured worker for a consultation with a psychiatrist. The psychiatrist must find that a psychiatric problem exists, determine whether the condition is directly related to the compensable injury, and must state the specific facts, circumstances, and authorities relied on to determine the causal relationship. Failure to provide this information shall result in the denial of the additional psychiatric diagnosis. Additionally, a Diagnosis Update must be attached to the treating physician's report to request the psychiatric condition be approved as a compensable component. The Office of Judges found that Ms. Snyder failed to comply with these requirements. The Board of Review reached the same reasoned conclusion in its decision of August 10, 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: January 19, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum

Justice Margaret L. Workman