

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**JAMES L. DONOFRIO,
Claimant Below, Petitioner**

**August 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**vs.) No. 101105 (BOR Appeal No. 2043866; 2044406)
(Claim No. 2006206878)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent**

and

**CONSOLIDATION COAL COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Orders dated August 9, 2010, in which the Board affirmed a November 30, 2009 and a March 30, 2010, Order of the Workers' Compensation Office of Judges. In its Orders, the Office of Judges affirmed the Claims Administrator's February 6, 2009 and March 30, 2009 Orders denying a request for medical benefits and the addition of a compensable component. 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.

The Office of Judges in affirming the denial for a total knee arthroplasty, found that the procedure, as it related to a non-compensable component (osteoarthritis), was not medically related and reasonably required. In its order affirming the denial of the addition of osteoarthritis as a compensable component, the Office of Judges found that claimant did not sustain the condition in the course of and as a result of his employment. Mr. Donofrio argues that he did prove that osteoarthritis should be a compensable component and that Dr. Martin's one-time evaluation should not negate the other evidence he provided.

In its order affirming the Claims Administrator's denial of medical benefits, the Office of Judges relied upon the fact that the knee arthroplasty was requested due to osteoarthritis, a condition which was not a compensable component of the claim. (November 30, 2009 Office of Judges Order, p.5). In the order denying the additional compensable component of osteoarthritis, the Office of Judges found that the preponderance of the evidence established the condition was pre-existing and not related to compensable injury. (March 30, 2010 Office of Judges Order, p. 7). It further noted Dr. Martin's finding that osteoarthritis was well established on imaging studies at the time of the injury. *Id.* at p. 6. The Office of Judges also found the record established the condition was bilateral in nature and caused by a congenital condition. *Id.* The Board reached the same reasoned conclusions in affirming the Office of Judges' Orders in its decision of August 9, 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 the additional compensable condition and medical benefits is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh