

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**Paul M. Jarvis,
Claimant Below, Petitioner**

**August 3, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**vs.) No. 101113 (BOR Appeal No. 2044242)
(Claim No. 2008039832)**

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

and

**M. J. Electric, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 11, 2010, in which the Board affirmed a February 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 30, 2008 decision to close the claim for temporary total disability benefits and the claims administrator's November 17, 2008 decision not to reopen the claim for consideration of temporary total disability benefits. 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 Mr. Jarvis failed to present any medical evidence demonstrating that he is temporarily and totally disabled. Mr. Jarvis disputes this finding and asserts that he is entitled to have his claim reopened for temporary total disability benefits based upon the opinions of Dr. Lesoski and Dr. Davenport, who both found that he suffered a probable cartilage tear in his right wrist, is temporarily and totally disabled until he finds an appropriate light duty job, and that he requires further medical treatment.

The Office of Judges noted that Mr. Jarvis was treated by Dr. Babayev initially, who diagnosed his injury as a sprain, and that Dr. Babayev found that Mr. Jarvis had experienced significant improvement following his injury and could return to work with no restrictions as of July 2, 2008. The Office of Judges also found that Mr. Jarvis sought additional medical care for his injury after moving to Michigan, and that Dr. Davenport examined him in October 2008, and found that he had suffered a probable triangular fibrocartilage tear and could return to work on light duty. Mr. Jarvis was examined by Dr. Lesoski on March 27, 2009, and he stated that Mr. Jarvis had suffered a probable trifibrocartilage tear in his right wrist. The Office of Judges specifically noted that Dr. Babayev's report described the condition of Mr. Jarvis's wrist in much greater detail than the report of either Dr. Davenport or Dr. Lesoski. The Office of Judges found that Mr. Jarvis did not cease working because of complications from his compensable injury, but rather because he was laid off. The Office of Judges held that because all physicians who examined Mr. Jarvis released him to return to work, and he in fact did return to work until he was laid off, he was not temporarily and totally disabled. The Board of Review reached the same reasoned conclusion in its decision of August 11, 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 to reopen the claim for an evaluation of temporary total disability benefits is affirmed.

Affirmed.

ISSUED: August 3, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum