

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**RICHARD L. CREMEANS,**  
**Claimant Below, Petitioner**

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

**vs.) No. 101124 (BOR Appeal No. 2044090)**  
**(Claim No. 2003005344)**

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

**and**

**ASHLAND OFFICE SUPPLY, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board affirmed an January 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's May 7, 2009 Order denying authorization for lumbar facet nerve blocks. The appeal was timely filed by the petitioner and a response was filed by the OIC. 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 the claimant had failed to prove by a preponderance of the evidence that the requested treatment was reasonably required. Petitioner argues that the requested treatment is reasonably required for treatment of the compensable injury. He maintains that the statement from the treating physician should provide sufficient evidence to authorize the treatment.

In its Order, affirming the Claims Administrator's denial for lumbar facet nerve blocks, the Office of Judges noted the lack of evidence provided by the petitioner. (January 29, 2010 Office of Judges Order, p. 5). It further noted the lack of response by the petitioner to previous requests for medical records from the claim administrator. *Id.* The Office of Judges noted that a statement to the effect of the treatment would aid in managing chronic pain was not sufficient to authorize the treatment, especially against the opinion of another physician. *Id.* at p. 4. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its August 19, 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 lumbar facet nerve blocks is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum