

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LOUIS P. ZACKEY, Petitioner

vs.) No. 101131 (BOR Appeal No. 2044126)
(Claim No. 2005001243)

FILED

October 26, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
CONSOLIDATION COAL COMPANY,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 19, 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 and modified the claims administrator's August 10, 2009 Order, which denied authorization for a left suprascapular injection finding that no shoulder condition has been found to be compensable. The Office of Judges denied the authorization on the grounds that the injection has not been substantiated by medical evidence to be reasonable and necessary, nor has it been shown to arise out of a compensable condition. The appeal was timely filed by the petitioner, and Consolidation Coal Company filed a response. 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 parties' submissions 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 denied authorization for a left suprascapular injection. Mr. Zackey argues that many of his medical providers have noted the involvement of his shoulder in treating his compensable condition,

a concussion and a cervical condition sustained when Mr. Zackey hit his head on a steel beam in an underground mine. Accordingly, he claims that he has established that his shoulder pain and corresponding need for a suprascapular injection arose from his compensable condition.

The Office of Judges, however, found that Mr. Zackey failed to submit medical evidence “demonstrating that the need for this service is reasonable and necessary and arising out of a compensable condition.” (Jan. 20, 2010 Office of Judges Order, p. 5.) A shoulder condition has not been found to be compensable. *Id.* at p. 4. Moreover, all of the medical records submitted by Mr. Zackey documented only his complaints of shoulder pain. No mention is made of the relatedness of this pain to his compensable injury. Finally, of the records submitted, the first notation was made 6 months following his compensable injury. Accordingly, the Office of Judges affirmed the denial of a left suprascapular injection, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its August 19, 2010 decision.

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 based upon the Board’s material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of a left suprascapular injection is affirmed.

Affirmed.

ISSUED: October 26, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh