

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FRANCIS E. SZALAY, Petitioner

vs.) No. 101132 (BOR Appeal No. 2044127)
(Claim No. 950062678)

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 20, 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 August 5, 2009, Order, which denied authorization for a neurosurgical consultation. 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 a neurosurgical consultation. Mr. Szalay argues that his treating physician, William Grubbs, DC, and Dr. Samy F. Sakla, M.D. have recommended a neurosurgical consultation. Accordingly, Mr. Szalay argues that he has established that the consultation is reasonably required, as set forth in West Virginia Code § 23-4-3.

The Office of Judges, however, noted that Mr. Szalay received a neurosurgical consultation four months prior to the subject request. (Jan. 20, 2010, Office of Judges Order, p. 3.) Irrespective of whether Chiropractor Grubbs or Dr. Sakla established the reasonableness of the consultation, absolutely no evidence was submitted to establish the reasonableness of a second consultation such a short time following the first. *Id.* Thus, the Office of Judges affirmed the denial of a neurosurgical consultation. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its August 20, 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 neurosurgical consultation 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