

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WALTON E. FLANNERY, Petitioner

November 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101141 (BOR Appeal No. 2044069)
(Claim No. 980020367)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
APPALACHIAN REGIONAL HEALTHCARE, 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 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of authorization for anterior cervical discectomies and allograft fusion with plating at C4-5 and C5-6. The appeal was timely filed by the petitioner and a response was filed by the Office of Insurance Commissioner. 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, response, 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.

Mr. Flannery asserts the relevant medical evidence supports a finding the requested medical treatment is reasonably related to his compensable injury and should be authorized. Dr. David L. Weinsweig clearly sets forth the causal connection between the compensable injuries and the requested medical treatment. The Office of Insurance Commissioner asserts the relevant claim includes only cervical and lumbar sprain while the requested medical

treatment is related to degenerative disc disease, a condition not authorized in the claim. As such, the requested medical treatment was properly denied by the Board of Review.

In its Order denying the requested medical treatment, the Office of Judges found the only evidence supporting authorization for the medical treatment is the statement of Dr. Weinsweig who notes the continuing complaints of pain are related to degenerative disc disease. (January 26, 2010, Office of Judges Order, p. 5). It further found that although Dr. Weinsweig reports Mr. Flannery suffers from cervical pain there is no causal connection established between the cervical disc disease and spondylosis and the compensable soft tissue injury. *Id.* Neither cervical disc disease nor spondylosis are compensable conditions of the claim. *Id.* It further held that the preponderance of the evidence does not establish the requested medical treatment is reasonably related to the instant compensable injuries. The Office of Judges, too, found no basis for authorization of the anterior cervical discectomies and allograft fusion with plating at C4-5 and C5-6 or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of August 19, 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 Court affirms the Board of Review Order denying authorization for anterior cervical discectomies and allograft fusion with plating at C4-5 and C5-6.

Affirmed.

ISSUED: November 17, 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