

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MARY A. COLLINS, Petitioner

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

vs.) No. 101153 (BOR Appeal No. 2044280)
(Claim No. 2004013922)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BLUEFIELD REGIONAL MEDICAL CENTER,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 17, 2010, in which the Board affirmed a March 17, 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 a repeat MRI. 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.

Ms. Collins asserts the Board of Review improperly denied the instant MRI in light of the relevant medical evidence establishing a causal connection between new complaints of pain and the medical necessity of the MRI. The Office of Insurance Commissioner asserts

Ms. Collins failed to prove a causal connection between her new complaints of pain and the requested MRI.

In its Order the Office of Judges held “[t]he evidence presented suggests the claimant indeed did have a new injury for the pain that the claimant complained of in her right shoulder following new event. The injury could have been incurred regardless of whether or not the claimant had a prior injury.” (March 17, 2010, Office of Judges Order, p. 3). It further held Petitioner has not filed a new claim regarding the injury nor has Petitioner presented sufficient evidence that the MRI for the right shoulder is medically related and reasonably required in relation to her compensable injury. *Id.* The Office of Judges, too, found no basis for authorizing the requested MRI or for disputing the Claims Administrator’s findings. *Id.* The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of August 17, 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 an MRI.

Affirmed.

ISSUED: November 17, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum