

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WALTER JENNINGS JR., Petitioner

November 10, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101165 (BOR Appeal No. 2044110)
(Claim No. 2005013747)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA PAVING, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 20, 2010, in which the Board affirmed a February 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the Claims Administrator's July 3, 2009, Order authorizing prescriptions for Robaxin, Orudis and Lyrica while denying a prescription for Lortab. 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 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 modifying the Claims Administrator's denial of medical benefits, the Office of Judges found the prescription for Lortab was not reasonably required to treat the compensable injury. Petitioner argues that the regulations relied upon are not designed to dictate results. Moreover, petitioner argues that placing arbitrary time limits on treatment is against statutory law.

The Office of Judges, in modifying the Claims Administrator's denial of certain prescriptions, relied upon a previous Board of Review decision finding the prescription for Lortab was not reasonably required to treat the claimant's compensable injury. (February 9, 2010, Office of Judges Order, p.8). The Office of Judges noted that the prescription was an ongoing treatment of the compensable injury for several years. *Id.* at p. 7. The previous Board of Review decision noted the evidence failed to establish the prescription was medically related and reasonably required. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision on August 20, 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 August 20, 2010, Board of Review Order is affirmed.

Affirmed.

ISSUED: November 10, 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