

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JACKIE L. OCHELTREE, Petitioner

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

vs.) No. 101169 (BOR Appeal No. 2044061)
(Claim No. 2001022013)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PECHINEY ROLLED PRODUCTS, LLC, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board affirmed a January 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's June 10, 2009, Order denying the requested medical benefits. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 the Office of Judges held the requested medical benefits were not reasonably required to treat the compensable injury. Petitioner argues that a statement from the treating physician should be enough to establish the benefits were reasonably required. Moreover, petitioner opines that since no evidence was produced relating to the unreasonableness of the requested treatment, the treatment should be authorized.

In its Order affirming the Claims Administrator's denial of follow-up office visits to Dr. Shramowiat, the Office of Judges noted the lack of evidence demonstrating the claim was extraordinary, warranting treatment outside of the guidelines. (January 15, 2010, Office of Judges Order p. 2). The Office of Judges also noted the evidence failed to prove the requested visit was medically reasonable in the treatment of the compensable injury. *Id.* at p. 3. The Board of Review reached the same reasoned conclusions 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 August 19, 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