

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**JOSEPH S. McCLURG, Petitioner**

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

**vs.) No. 101174 (BOR Appeal No. 2044492)**  
**(Claim No. 2009075029)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
MORGANTOWN SNF ACQUISITION, LLC, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 17, 2010, in which the Board affirmed an April 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's July 17, 2009, August 19, 2009, and December 17, 2009, Orders denying temporary total disability and 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.

The Board of Review affirmed the holding that the petitioner was no longer entitled to temporary total disability benefits and the medical benefits requested were not related to the compensable lumbar sprain. Mr. McClurg argues that the Board of Review was wrong to close the claim for temporary total disability, as he had not yet been released to return to work. He also argues that it is wrong to close a claim for medical benefits.

In its Order affirming the Claim Administrator's denial of temporary total disability and medical benefits, the Office of Judges noted the evidence of pre-existing degenerative disc disease. (April 29, 2010, Office of Judges Order, p. 13). It further noted the denial of temporary total disability benefits hinged on a finding that the claimant had reached maximum medical improvement for the compensable lumbar sprain. *Id.* at p. 15. The Office of Judges also noted the treating physician had found the medication requested was not working and he was treating symptoms resulting from a non-compensable condition. *Id.* at p. 13. The Board of Review reached the same reasoned 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 August 17, 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 Menis E. Ketchum

Justice Thomas E. McHugh