

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MICHAEL L. TROWBRIDGE, Petitioner

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101177 (BOR Appeal No. 2044289)
(Claim No. 2003052829)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CONSOLIDATION COAL COMPANY, 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 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 3, 2009, decision denying authorization for a nerve root block, radio frequency, and trigger point injections. 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 that Mr. Trowbridge's request for lumbar trigger point injections was moot, and that his request for a nerve root block and radiofrequency was properly denied, pending his decision as to surgical intervention. Mr. Trowbridge disputes this finding and asserts that Dr. Roland Chalifoux's recommendation of these treatments is prima facie evidence of their reasonableness and necessity.

Specifically, the Office of Judges found that Mr. Trowbridge had already received authorization for the requested lumbar epidural steroid injections, and that the authorization was still valid at the time of his request for treatment. The Office of Judges also found that, per an August 11, 2009, neurosurgical report, Mr. Trowbridge was presented with the option of surgery to assist with leg pain. Mr. Trowbridge indicated that he wished to discuss the matter with his family, and the outcome of that decision is not of record. The Office of Judges found that the August 11, 2009, report does not mention a treatment alternative to surgery, and therefore found it prudent to deny authorization of radiofrequency and a selective nerve block pending Mr. Trowbridge's decision. The Board of Review reached the same reasoned conclusion in its decision of 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 15, 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