

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LARRY R. NELSON, Petitioner

December 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101249 (BOR Appeal No. 2044092)
(Claim No. 2004043259)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST LIBERTY STATE COLLEGE, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 31, 2010, in which the Board affirmed a January 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's remand for an independent medical examination. The appeal was timely filed by the petitioner and no response was filed by West Liberty State College. 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.

The Board of Review entered an Order denying Mr. Nelson's request for a remand to the Claim's Administrator citing the instant appeal solely addressed Mr. Nelson's entitlement to a permanent partial disability award and not any continuing medical treatment needs. Mr. Nelson asserts that prior to the Office of Judges Order he filed a request for a remand and independent medical examination due to the recommendation of Dr. Patricia

Bailey opining additional treatment was needed and a claimed hospitalization after the Claim's Administrator Order. A response was not filed by West Liberty State College.

In its Order denying a remand, the Office of Judges held Dr. Bailey opined Petitioner would benefit from additional psychiatric treatment and from a psychiatric evaluation to determine an appropriate psychotropic medication for Mr. Nelson's major depressive disorder. (January 12, 2010 Office of Judges Order, p. 5). On the other hand, Dr. Logan Graddy opined Petitioner was at maximum medical improvement from a psychiatric standpoint and noted the condition would not improve with additional treatment. *Id.*, p. 4. It further held, Mr. Nelson's request for remand for additional treatment was outside the issue presented on appeal. "As noted above, the issue in this Decision is permanent psychiatric impairment not whether the claimant is entitled to treatment on this record." *Id.*, p. 5. The finding of maximum medical improvement does not prevent Mr. Nelson from continuing treatment. *Id.* The Office of Judges, too, found no basis for granting Mr. Nelson's request for a remand for an independent medical evaluation or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of September 2, 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 Mr. Nelson's request for remand for an independent medical evaluation.

Affirmed.

ISSUED: December 16, 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