

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DONALD W. HELMICK, Petitioner

December 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101311 (BOR Appeal No. 2044493)
(Claim No. 2008135176)

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 September 15, 2010, in which the Board affirmed an April 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 5, 2009, decision to close the claim for temporary total disability 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 that Mr. Helmick's claim was properly closed for temporary total disability benefits. Mr. Helmick disputes this finding and points to Dr. Biundo's statement that all medical treatment he received after March 2008 was directly related to his March 10, 2008, injury. He also asserts that in addition to lumbosacral sprain/strain, he suffers from lumbosacral stenosis as a direct result of his March 10, 2008, injury, and requires additional treatment. Specifically, the Office of Judges found that Mr.

Helmick does suffer from lumbosacral stenosis, but that contrary to Mr. Helmick's and Dr. Biundo's assertions, Dr. Biundo's correspondence in fact indicates that the stenosis was underlying and pre-existing, and that Dr. Biundo's assertion that he was treating Mr. Helmick solely for conditions arising from his March 10, 2008, injury is not persuasive. The Board of Review reached the same reasoned conclusion in its decision of September 15, 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: December 14, 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