

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

December 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

TIMOTHY G. HAUGHT, Petitioner

vs.) No. 101342 (BOR Appeal No. 2044408)
(Claim No. 2006060809)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
UNITED CONSTRUCTION COMPANY, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Timothy G. Haught, by M. Jane Glauser, his attorney, appeals the Board of Review Order denying an initial psychiatric consultation. United Construction Company, Inc., by Lucinda L. Fluharty, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 22, 2010, in which the Board affirmed a March 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of authorization for an initial psychiatric consultation. 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 briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The Board of Review held that Mr. Haught failed to establish a causal connection between the psychiatric conditions and the compensable injuries of this claim. Mr. Haught asserts that the recommendation from his treating physician is sufficient for authorization of an initial psychiatric consultation pursuant to West Virginia Code of State Rules § 85-20-9.10g. Dr. Keith Poole submitted an appropriate request for a psychiatric consultation.

The Office of Judges held there is no causal connection between Dr. Poole's request for a psychiatric consultation and the compensable injuries. Additionally, the Office of Judges noted that Dr. Poole's medical records from February 27, 2007, through July 28, 2009, do not mention any psychiatric symptoms. Further, while Dr. Dauphin's and Dr. Langa's independent medical evaluations noted that Mr. Haught was taking Xanax, this fails to establish that Mr. Haught developed depression as a result of the compensable injuries. Therefore, the Office of Judges affirmed the claims administrator's order denying an initial psychiatric consultation. The Board of Review reached the same reasoned conclusion in its Order of September 22, 2010.

This Court recently held in *Hale v. West Virginia Office of Ins. Comm'r*, 228 W.Va. 781, 724 S.E.2d 752, (2012), that a three-step process must be undertaken when a claimant is seeking to add a psychiatric condition as a compensable injury to his / her claim. First, the claimant's treating physician refers the claimant to a psychiatrist for an initial consultation; following the initial consultation, the psychiatrist is to make a detailed report consistent with the procedure described in West Virginia Code of State Rules § 85-20-12.4; last, aided by the psychiatrist report, the claims administrator is to determine whether the psychiatric condition should be added as a compensable injury in the claim. Syllabus Point 2, *Hale*. Mr. Haught was not afforded an initial psychiatric consultation as provided in West Virginia Code of State Rules § 85-20-9.10g. Therefore, the Court holds that this matter shall be remanded for further proceedings consistent with the three-step process set forth in *Hale*.

For the foregoing reasons, we find that the decision of the Board of Review is in clear violation of statutory provisions. Therefore, the Court reverses the Board of Review order denying Mr. Haught's request for an initial psychiatric consultation. This matter is remanded with directions to refer Mr. Haught for an initial psychiatric consultation and a determination of whether the psychiatric condition, if any, should be accepted as a compensable condition in Mr. Haught's claim.

Reversed and Remanded.

ISSUED: December 7, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh