

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

THOMAS L. COOPER, Petitioner

February 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 101382 (BOR Appeal No. 2044311)
(Claim No. 2008049105)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
APPALACHIAN POWER COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Thomas L. Cooper, by Patrick Maroney, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order closing the claim for temporary total disability benefits. Appalachian Power Company, by Henry Bowen, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 30, 2010, in which the Board affirmed a February 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's March 18, 2009, Order which closed the claim for temporary total disability benefits. 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 has reached maximum medical improvement and is no longer entitled to temporary total disability benefits. The

petitioner disagrees with this finding and argues that the treating physician had not released him to work and was in fact ordering further physical therapy. Further, petitioner contends that he was actively receiving physical therapy and other treatment of his occupational injury and his temporary total disability benefits should not have been terminated.

In its Order affirming the Claims Administrator's closure of the claim for temporary total disability benefits, the Office of Judges found the preponderance of the evidence did not establish the petitioner was entitled to further temporary total disability benefits. The Office of Judges noted that while the record demonstrated the petitioner was participating in treatment of the occupational injury, it did not demonstrate that the claimant remained temporarily and totally disabled. (February 26, 2010, Office of Judges Order, p.4). The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision on September 30, 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: : February 22, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum