

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

PAUL E. STOVER, Petitioner

vs.) No. 101398 (BOR Appeal No. 2044403)
(Claim No. 2002030801)

FILED

December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BAR-K, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 4, 2010, in which the Board affirmed a March 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 16, 2009, Order, which denied authorization for a referral to Neurological Associates. The appeal was timely filed by the petitioner, and the West Virginia Office of Insurance Commissioner filed a response. 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 parties' submissions 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 Office of Judge's Order, which denied Mr. Stover authorization for a neurological consultation. Mr. Stover states that he continues to suffer from numbness and pain down his legs following a 2001 work-related back injury. He argues that several of his compensable components could cause these symptoms. Further, he notes that his back injuries have all been work-related; thus, it cannot be said that his need for a neurological consultation is attributable to a noncompensable condition.

The Office of Judges noted that Mr. Stover's treating physician, Dr. Sue Westfall, sought authorization to evaluate the progression of Mr. Stover's lumbar stenosis. (Mar. 29 2010, Office of Judges Order, p. 5.) Lumbar stenosis, however, is not a compensable component of his claim. *Id.* at p. 9. Simply, because the request treatment is not for a compensable component, the request for authorization for a referral to Neurological Associates was denied. *Id.* at p. 10. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its October 4, 2010, decision.

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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of authorization for a referral to Neurological Associates is affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum