

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

SHARON J. ALLEN, Petitioner

March 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101434 (BOR Appeal No. 2044441)
(Claim No. 2002058629)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,
Respondent**

MEMORANDUM DECISION

Petitioner, Sharon J. Allen, by Thomas C. Cady, her attorney, appeals the Board of Review order denying authorization for Motrin 600 mg, Flexeril 10 mg, Trazodone 50 mg, Tylenol #4, and Soma 350 mg. The Office of Insurance Commissioner, by Gary M. Mazezka, its attorney, filed a timely response.

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 24, 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 Motrin 600 mg, Flexeril 10 mg, Trazodone 50 mg, Tylenol #4, and Soma 350 mg. 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.

Ms. Allen suffered a low back sprain / strain while attempting to assist a patient back into bed. Following the injury, Ms. Allen sought treatment with Dr. Brian P. Mudry, who prescribed certain medications for treatment of her complaints of pain. This appeal arises out of the November 20, 2009, letter from Dr. Mudry requesting authorization for Motrin 600 mg, Flexeril 10 mg, Trazodone 50 mg, Tylenol #4, and Soma 350 mg. Ms. Allen testified that she continues to suffer from pain and the medications assist in alleviating the pain. During testimony, Ms. Allen

acknowledged she also has a pre-existing herniated disc in the area of her compensable injury. At the time of the testimony, Ms. Allen stated she was then taking Tylenol #4, Flexeril, and Trazodone.

The Office of Judges determined Dr. Mudry's letter did not contain any supporting documentation for authorizing the requested medications. Testing conducted after the injury in this claim revealed spinal stenosis at the L4-5 and spondylolisthesis at L4, just above the cervical disc fusion site, which the Office of Judges felt was not an unusual finding from a spinal fusion at another level. Thus, the Office of Judges held Ms. Allen failed to establish the requisite finding that the requested medications are reasonably required in relation to the compensable injury. The Office of Judges, too, found no basis for authorizing the medications, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 4, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Court affirms the Board of Review order denying Ms. Allen's request for Motrin 600 mg, Flexeril 10 mg, Trazodone 50 mg, Tylenol #4, and Soma 350 mg.

Affirmed.

ISSUED: March 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin