

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

DAVID W. BOLYARD, Petitioner

vs.) No. 101563 (BOR Appeal No. 2044605)
(Claim No. 980012732)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GREER INDUSTRIES, INC., Respondent**

MEMORANDUM DECISION

Petitioner, David W. Bolyard, pro se, appeals the Board of Review Order denying his request for the medication Ativan. Greer Industries, Inc., by George E. Roeder III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 10, 2010, in which the Board affirmed an April 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 13, 2009, Order, which denied Mr. Bolyard's request for the medication Ativan. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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 Judges' Order, which denied authorization for Ativan. Although a urine analysis indicated that Mr. Bolyard either was not taking his Ativan or was not taking it as prescribed, he argues that this should not preclude him from obtaining future prescriptions as he has taken this medication for many years without problematic urine screen results. Further, he explains his failure to immediately obtain a follow-up urine screen on the day it was prescribed is attributable to the fact that several medical facilities were unable to perform drug screens on that day.

The Office of Judges noted first that Mr. Bolyard's January 13, 2009, drug screen revealed that he was either not taking his Ativan or not taking it as prescribed. Mr. Bolyard was prescribed a random, follow-up urine screen, but he failed to obtain it on the date prescribed. The time in

between the day it was prescribed and the day he ultimately obtained it was sufficient for him to take his Ativan and have it appear in the analysis. This “makes the test less than random and the positive result suspect.” Moreover, following Mr. Bolyard’s January 13, 2009, drug screen, Dr. Richard Vaglianti stated that discontinuation of Ativan was appropriate, especially if future, random tests were negative for Ativan. As previously mentioned, Mr. Bolyard delayed in obtaining his future, random test, which calls into question its result. For these reasons, the Office of Judges affirmed the denial of his request for Ativan. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 10, 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, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board’s material misstatement or mischaracterization of the evidentiary record. Therefore, the denial of Mr. Bolyard’s request for Ativan is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh