

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 18, 2012

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

HAIRAM ACORD, Petitioner

**vs.) No. 101583 (BOR Appeal No. 2044600)
(Claim No. 2008012785)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FRASURE CREEK MINING, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Hiram Acord, by Stephen New, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying a request for additional temporary total disability benefits and a request for vocational rehabilitation. Frasure Creek Mining LLC, by Nathaniel Kuratomi, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 9, 2010, in which the Board affirmed an April, 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 10, 2009, and March 23, 2009, Orders closing the claim for vocational rehabilitation and 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.

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 failed to demonstrate that he remains temporarily and totally disabled due to the compensable conditions or that closing the claim for vocational rehabilitation services was inappropriate. The petitioner disagrees with these findings and asserts that it was wrong to discontinue vocational rehabilitation and points out that his

prognosis is limited without those services. Additionally, the petitioner argues that he remains temporarily and totally disabled as he has received no treatment for the right shoulder.

In its Order affirming the claims administrator's closure of the claim for vocational rehabilitation and temporary total disability benefits, the Office of Judges noted that the claims administrator denied a request to add the right shoulder as a compensable component of the claim with no appeal by the petitioner. The Office of Judges found the petitioner's arguments to be based upon the contention that the right shoulder is a compensable component of the injury. It noted that in consideration of the non-occupational right shoulder condition and Dr. Guberman's report that the petitioner had reached maximum medical improvement, vocational rehabilitation and temporary total disability benefits were not supported by the record. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of November 9, 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin, Not Participating