

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**JAMES WADDELL, Petitioner**

**July 17, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 11-0201 (BOR Appeal No. 2044719)**  
**(Claim No. 2009072389)**

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

**MEMORANDUM DECISION**

Petitioner James Waddell, pro se, appeals the West Virginia Workers' Compensation Board of Review's Order denying requests for an additional compensable component, medical benefits, and additional temporary total disability benefits. 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 January 21, 2011, in which the Board affirmed a June 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Orders denying a request for an additional compensable component, denying a request for medical benefits, and denying a request for additional 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.

In this case, Mr. Waddell was working for Frasure Creek Mining, LLC when he injured his right knee on December 16, 2008. The claim was subsequently held compensable on December 22, 2008, for a sprain/strain of the MCL of the right knee. The claims administrator on March 5, 2009, and May 18, 2009, denied requests to add the lower back as a compensable component of the claim.

The claims administrator on May 18, 2009, also denied a request to authorize a total knee replacement. Subsequently, on July 28, 2009, and August 10, 2009, the claims administrator closed the claim for temporary total disability benefits.

The Office of Judges concluded that a preponderance of the credible evidence established that the lower back condition is not a part of the compensable injury, that the total knee replacement is not directly related to the compensable injury, and that Mr. Waddell had reached his maximum degree of medical improvement with regards to the compensable injury. On appeal, Mr. Waddell disagrees and argues that he is entitled to the additional compensable component, the medical benefits, and the additional temporary total disability benefits.

The Office of Judges found that the lower back condition Mr. Waddell suffers preexisted the compensable injury. In reaching this conclusion, the Office of Judges noted that the record established that Mr. Waddell complained of lower back problems, and was treated for such for several months prior to the compensable injury. It also noted that two MRIs, one prior to the compensable injury, and one after the compensable injury are similar in nature and reveal no more than degenerative changes. Thus, the Office of Judges concluded the lower back condition did not occur in the course of and as a result of Mr. Waddell's employment.

Next, the Office of Judges concluded that the total knee replacement was not medically related and reasonably required medical treatment for the compensable injury. In reaching this conclusion, the Office of Judges noted that the record established that not only did Mr. Waddell suffer two significant right knee injuries prior to the compensable injury, but he also suffered from chronic knee pain after those significant injuries. It also noted that Drs. Thaxton, Mir, Loimil, and Mukkamala all found that preexisting arthritic changes, rather than the compensable injury, contributed to the need for surgical intervention. Thus, the Office of Judges found that the total knee replacement was not related to the compensable injury.

Finally, the Office of Judges found that Mr. Waddell has reached his maximum degree of medical improvement with regards to the compensable injury, and was not entitled to additional temporary total disability benefits. In reaching this conclusion, the Office of Judges noted the ongoing disability was not related to the compensable injury, but rather a surgical procedure not authorized under this claim, and thus concluded Mr. Waddell was not entitled to additional temporary total disability benefits. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of January 21, 2011.

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: July 17, 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