

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

RODNEY W. RICHARDSON, Petitioner

August 14, 20112
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0245 (BOR Appeal No. 2044828)
(Claim No. 810012850)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CHARLESTON WEST 76 AUTO, Respondent

MEMORANDUM DECISION

Petitioner Rodney W. Richardson, by Patrick Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Brandolyn Felton, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 11, 2011, in which the Board affirmed a July 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 12, 2008, decision denying Mr. Richardson's request for authorization of the medications Neurontin, Valium, Senokot, Trazodone, and Ibuprofen. 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.

Mr. Richardson was employed with Charleston West 76 Auto as a mechanic. On September 19, 1980, he was involved in a work-related motor vehicle accident and sustained injuries to his neck and back. At least some of the injuries he sustained were held compensable, although neither the exact injuries held compensable nor the exact nature of the injuries he sustained are contained in the record before this Court. On March 17, 2009, Dr. Bowen stated that Mr. Richardson sustained neck and back injuries in a 1980 work-related motor vehicle accident and continues to require treatment

as a result of these injuries. This report indicates that Mr. Richardson suffers from a number of degenerative conditions, but does not attribute any of these degenerative conditions to the September 19, 1980, injury. However, this report does mention that Mr. Richardson suffers from pain and depression as a result of the 1980 injury. On January 18, 2010, Dr. Bowen requested authorization for Neurontin, Valium, Senokot, Trazodone, and Ibuprofen and made the bare statement that the medications are requested to treat Mr. Richardson's neck pain resulting from the 1980 work-related injury. On appeal, Mr. Richardson asserts that the requested medications are necessary for the continued treatment of his compensable injuries.

In *Staubs v. State Workmen's Compensation Commissioner*, 153 W.Va. 337, 168 S.E.2d 730, (1969), this Court held that "A claimant in a workmen's compensation proceeding has the burden of proving his claim." As noted by the Office of Judges, it is impossible for this Court to determine what conditions have been held compensable in the instant claim given the evidence, or lack thereof, of record. Without identification of the compensable components of the claim, or even evidence of the specific injuries sustained by Mr. Richardson on September 19, 1980, the statements from Dr. Bowen are insufficient to establish that the requested medications are related to the treatment of any injury sustained by Mr. Richardson on September 19, 1980. Moreover, the Office of Judges found that although the record indicates that the claim was held compensable for at least some of the injuries to Mr. Richardson's neck and back, he is currently being treated primarily for degenerative changes of the spine. It also found that there is no evidence of record indicating that the claim was ever held compensable for a psychiatric condition, including depression; despite this, Mr. Richardson's physician has requested the authorization of medications to treat depression related to the 1980 injury. The Board of Review reached the same reasoned conclusions in its decision of January 11, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: August 14, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum