

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ARCHIE LEE CASTO, Petitioner

August 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0246 (BOR Appeal No. 2044831)
(Claim No. 880063390)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PECHINEY ROLLED PRODUCTS, LLC, Respondent

MEMORANDUM DECISION

Petitioner Archie Lee Casto, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pechiney Rolled Products, LLC, by H. Toney Stroud, 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 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 19, 2009, decision denying Mr. Casto's request for authorization of the medication Ultram. 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. Casto was employed as a plant worker with Pechiney Rolled Products, LLC. On January 22, 1988, he sustained a compensable lumbosacral injury. In 1995, Dr. Hills diagnosed Mr. Casto with degenerative arthritic changes throughout his body, and found that these degenerative changes were the cause of his current symptoms. In 2010, Dr. Deer diagnosed Mr. Casto with back pain secondary to the January 22, 1988, injury.

In its Order, the Office of Judges held that the preponderance of the evidence supports the claims administrator's denial of the medication Ultram. Mr. Casto disputes this finding and asserts that Dr. Deer feels that the use of Ultram is reasonable and necessary medical treatment.

The Office of Judges found that the continued authorization of Ultram for a twenty-four-year-old injury was not warranted pursuant to West Virginia Code of State Rules § 85-20 (2006). The Office of Judges indicated that pursuant to West Virginia Code of State Rules § 85-20-4.1 (2006), Mr. Casto failed to provide sufficient medical documentation to allow for a deviation from the guidelines set forth in West Virginia Code of State Rules § 85-20. The Board of Review reached the same reasoned conclusion 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:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh