

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 8, 2013

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

RICHARD J. HARRIS,
Claimant Below, Petitioner

vs.) **No. 11-0339** (BOR Appeal No. 2045093)
(Claim No. 980039691)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,**
Commissioner Below, Respondent

and

BJM COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Richard J. Harris, by Randall W. Galford, appeals the decision of the West Virginia Workers' Compensation Board of Review denying certain medications. The West Virginia Office of Insurance Commissioner, by Jack M. Rife, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 15, 2011, in which the Board affirmed a September 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 9, 2010, order denying authorization for the medications Neurontin, Lortab, and Relafen. 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 Rules of Appellate Procedure.

Mr. Harris sustained a compensable low back injury on January 21, 1998, as he was lifting a rock off a miner. Mr. Harris's claim was held compensable for a lumbar sprain. At the time he received medical treatment for this injury, a lumbar spine MRI revealed degenerative disc disease. Mr. Harris also requested authorization for a lumbar laminectomy during the course of this claim, but that request was denied. Mr. Harris ultimately underwent the lumbar laminectomy, but not as part of this claim.

On April 1, 2010, Mr. Harris's treating physician, Dr. Luke McElwain, requested authorization for Neurontin, Lortab, and Relafen. The claims administrator denied this request finding no relation between the requested medication and Mr. Harris's compensable lumbar sprain.

Mr. Harris urges this Court to find that his pain is chronic in nature and resulting from his compensable lumbar sprain; however, no medical evidence has been offered in support of this contention.

In affirming the denial of Mr. Harris's requested medications, the Office of Judges noted that Mr. Harris has failed to establish that the requested medications are medically related or reasonably required to treat his subject compensable injury. Mr. Harris's claim has been held compensable for a lumbar sprain only, and at the time of his compensable injury, he was diagnosed with lumbar spine degenerative disease. The Office of Judges concluded that Mr. Harris failed to establish by a preponderance of the evidence that the requested medications are related to his compensable lumbar sprain. The Board of Review affirmed the denial of the requested medical benefits. We agree with the Board of Review's decision.

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: May 8, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum