

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

December 5, 2012

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

**KIRBY A. WHITE, Petitioner**

**vs.) No. 11-0582** (BOR Appeal No. 2045059)  
(Claim No. 2009075618)

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
PINE RIDGE COAL COMPANY, LLC, Respondent**

**MEMORANDUM DECISION**

Petitioner Kirby A. White, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pine Ridge Coal Company, LLC, by Robert Busse<sup>1</sup>, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 16, 2011, in which the Board affirmed an August 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 4, 2009, decision to close the claim for 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.

Mr. White was working for Pine Ridge Coal Company when he injured his back on January 13, 2009. On June 14, 2009, Dr. Martin, the treating physician, released the claimant to return to work. The claims administrator closed the claim for temporary total disability benefits on August 4, 2009.

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<sup>1</sup> On April 18, 2011, Robert Busse withdrew from the representation of Pine Ridge Coal Company. Pine Ridge Coal Company is currently represented by Henry Bowen.

The Office of Judges concluded that pursuant to West Virginia Code § 23-4-7a (2005), the claim was properly closed for temporary total disability benefits. On appeal, Mr. White argues that the medical evidence establishes that he was temporarily and totally disabled until September 12, 2009. Pine Ridge Coal Company maintains that the closure of the claim for temporary total disability benefits was proper given that the petitioner was released to return to work.

In reaching the conclusion to affirm the claims administrator's Order closing the claim for temporary total disability benefits, the Office of Judges noted a history of back problems, and a vehicle accident involving spinal symptoms that occurred four months after the compensable injury. The Office of Judges found that Mr. White had been released to return to work and was no longer entitled to temporary total disability benefits. Thus, the claim was properly closed for temporary total disability benefits. The Board of Review reached the same reasoned conclusion in its decision of March 16, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: December 5, 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