

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 5, 2012

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

RONALD L. BARNHART, Petitioner

vs.) **No. 11-0654** (BOR Appeal No. 2044981)
(Claim No. 2004025607)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
VALERO TERRESTRIAL CORPORATION,
Respondent**

MEMORANDUM DECISION

Petitioner Ronald L. Barnhart, by Christopher Wallace, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by David Stuart, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 4, 2011, in which the Board affirmed an August 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 10, 2010, decision denying a request for an L3-4 discogram. 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. Barnhart was working as a laborer for Valero Terrestrial Corporation when he injured his back. The claim was held compensable on January 12, 2004, for muscle spasms and lumbago. On January 14, 2005, Dr. Sethi found that Mr. Barnhart had reached maximum medical improvement, and would need no further surgery or medical intervention. On May 10, 2010, the claims administrator denied a request for an L3-4 discogram as unrelated to the compensable conditions.

The Office of Judges affirmed the claims administrator's Order, finding the preponderance of the evidence did not establish that the discogram was medically related and reasonably required medical treatment for lumbago and muscle spasms. On appeal, Mr. Barnhart argues that the compensable injury was more than a simple back sprain, as evidenced by prior treatment, and that his treating physician was in the best position to evaluate further treatment. The West Virginia Office of Insurance Commissioner argues that according to the record, the compensable conditions do not necessitate the discogram.

In reaching the conclusion to affirm the claims administrator's denial of a request for an L3-4 discogram, the Office of Judges noted that Mr. Barnhart had already reached maximum medical improvement for the compensable injury. Further, the Office of Judges noted that there was no evidence to establish a progression or aggravation of the compensable injury, and that the evidence did not establish a causal connection between the requested benefits and compensable injury. Thus, the Office of Judges held that the request for medical benefits was properly denied. The Board of Review reached the same reasoned conclusion in its decision of April 4, 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 Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin