

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RANDY D. KINCAID,
Claimant Below, Petitioner

FILED
February 7, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0685 (BOR Appeal No. 2045069)
(Claim No. 2010113882)

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

and

MAPLE COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Randy D. Kincaid, by John Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Maple Coal Company, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 28, 2011, in which the Board modified an August 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's November 19, 2009, decision and held the claim compensable and granted temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Kincaid was working for Maple Coal Company when he injured his neck on September 4, 2009. The claims administrator rejected the claim for workers' compensation benefits on November 19, 2009, finding that a work-related injury did not occur.

The Office of Judges reversed the claims administrator's Order, holding the claim compensable, and granted temporary total disability benefits from September 5, 2009, through April 1, 2010, and thereafter as substantiated by proper medical evidence. The Board of Review modified the Office of Judges' Order to grant temporary total disability benefits from September 5, 2009, through September 18, 2009. On appeal, Mr. Kincaid asserts that he was off work until April 1, 2010, that there was no medical evidence to support the Board of Review's finding that he was not entitled to temporary total disability benefits past September 18, 2009, and that he is entitled to temporary total disability benefits through at least April 1, 2010. Maple Coal Company maintains that Mr. Kincaid was not entitled to temporary total disability benefits past September 18, 2009, as found by the Board of Review.

The Board of Review found that the claim was properly held compensable by the Office of Judges, but that Mr. Kincaid was only entitled to temporary total disability benefits through September 18, 2009. The Board of Review noted the lack of evidence establishing that Mr. Kincaid was unable to work beyond September 18, 2009. Additionally, the Board of Review noted a lack of evidence detailing treatment after October 2, 2009. Thus, it concluded that the preponderance of the evidence did not establish that Mr. Kincaid was entitled to temporary total disability benefits after September 18, 2009. 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: February 7, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum