

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 6, 2012

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

OWEN S. CHANNEL JR., Petitioner

**vs.) No. 11-0734 (BOR Appeal No. 2045072)
(Claim No. 900039418)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
CONSOLIDATION COAL COMPANY, and
NORTH WV REGION FAIRMONT OP, Respondent**

MEMORANDUM DECISION

Petitioner Owen S. Channel Jr., by M. Jane Glauser, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits. Consolidation Coal Company, by Edward George, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 4, 2011, in which the Board affirmed an August 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Orders denying requests for the medications Lithium, Adderall, and Savella. 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. Channel suffered an injury to his cervical spine while at work on February 9, 1990, and he subsequently developed major depression as a result of his compensable injury. He was treated by Drs. Chattha and Campbell, who requested that the treatment include Lithium, Adderall, and Savella. In a report dated February 27, 2010, Dr. Chattha states that Adderall is for the treatment of attention deficit disorder. The claims administrator denied the requests for Lithium and Adderall

pointing to previous decisions denying such medications, noting those decisions had been affirmed by the Office of Judges. The claims administrator also denied the request for Savella, finding it was for treatment of a condition not related to the compensable injury. The Office of Judges affirmed the claims administrator's Order, finding the preponderance of the evidence did not establish that Mr. Channel was entitled to the requested benefits.

The Board of Review affirmed the holding that the requested medications were not reasonably required for treatment of the compensable injury. On appeal, Mr. Channel argues that the evidence supports a finding that the requested medications are reasonable in the treatment of the compensable injury, noting there is a lack of evidence showing the medications are not reasonable.

In its Order affirming the claims administrator's denial of the requested medications, the Office of Judges noted that Mr. Channel failed to prove that the medications are reasonably required for treatment of the compensable injury. Additionally, the Office of Judges held that the request for Lithium and Adderall was res judicata, noting the prior claims administrator's Orders and Decisions by the Office of Judges on the same issue. The Board of Review reached the same reasoned conclusion in its Order of April 4, 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 6, 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