

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 8, 2013

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

CHARLES S. FORTZ,
Claimant Below, Petitioner

vs.) No. 11-0820 (BOR Appeal No. 2045240)
(Claim No. 2007215955)

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

and

MCELROY COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Charles S. Fortz, by Robert Stultz, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. McElroy Coal Company, by Edward M. George III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 21, 2011, in which the Board affirmed an October 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 27, 2010, decision denying authorization for a repeat cervical MRI, and denying authorization for surgery of two discs. 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. Fortz was working for McElroy Coal Company when he injured his cervical spine. The claim was subsequently held compensable for a neck sprain. On June 7, 2009, Mr. Fortz underwent a cervical MRI. On January 27, 2010, the claims administrator denied requests for a repeat cervical MRI and surgery of two discs.

The Office of Judges found that the preponderance of the evidence did not establish that the requested medical benefits were medically necessary and reasonably required for the treatment of the compensable injury. On appeal, Mr. Fortz argues that the MRI and surgery are necessary, as Dr. Mejia's clear and concise testimony demonstrates. McElroy Coal Company maintains that the evidence does not establish that the requested medical benefits are reasonable and necessary for the treatment of the compensable injury.

In affirming the claims administrator's Order, the Office of Judges noted that previous Office of Judges' Orders had found that Mr. Fortz's current symptoms did not represent an aggravation or progression of the compensable injury. The Office of Judges found that Dr. Mejia requested the repeat cervical MRI for the purpose of a consult with a neurosurgeon, and as the consult was denied, there was no other reason to justify repeating the diagnostic testing. Additionally, the Office of Judges found that it was not the compensable injury that warranted surgery. Thus, the Office of Judges held that the repeat MRI and surgery of two discs were not medically necessary and reasonably required medical treatment of the compensable injury. The Board of Review reached the same reasoned conclusions in its decision of April 21, 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: February 8, 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