

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**ROGER D. DAMRON, Petitioner**

**July 20, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 11-0949 (BOR Appeal No. 2045406)**  
**(Claim No. 2004011478)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**ROCKHOUSE CREEK DEVELOPMENT, Respondent**

**MEMORANDUM DECISION**

Petitioner, Roger D. Damron, by John C. Blair, his attorney, appeals the Board of Review Order denying a request for a referral to the Center for Pain Relief. The West Virginia Office of Insurance Commissioner, by David L. Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 7, 2011, in which the Board affirmed a December 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of authorization for a referral to the Center for Pain Relief. 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, response, 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.

The Board of Review held Mr. Damron failed to present sufficient evidence establishing the medical necessity for the referral to the Center for Pain Relief when Dr. Prasadarao B. Mukkamala, opined in his independent medical evaluation that Mr. Damron is at maximum medical improvement for all injuries and claims, and there is no further necessity for maintenance care. Mr. Damron asserts Dr. Ulysses Agas sufficiently set forth the necessary evidence for authorization of the referral to the Center for Pain Relief. In support, Mr. Damron submitted treatment notes from Dr. Agas for three

occasions prior to the independent medical evaluation with Dr. Mukkamala. Each of these notes, January 4, 2010, April 1, 2010, and June 28, 2010, document Mr. Damron's complaints of low back pain. However, the note for June 28, 2010, documents improvement in Mr. Damron's low back pain. The claims administrator denied Mr. Damron's request based on Dr. Mukkamala's finding of maximum medical improvement.

The Office of Judges found that Mr. Damron was evaluated by Dr. Mukkamala who found Mr. Damron's condition static and at maximum medical improvement as defined by the West Virginia Code of State Rules. Dr. Mukkamala further found Mr. Damron required no further treatment. On the other hand, the Office of Judges noted Dr. Agas did not provide any justification to contradict the findings of Dr. Mukkamala and the claims administrator denied the request. Thus, the Office of Judges affirmed the claims administrator's Order denying authorization for a referral to the Center for Pain Relief. The Board of Review reached the same reasoned conclusion in its Order of June 7, 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 Court affirms the Board of Review Order denying authorization for referral to the Center for Pain Relief.

Affirmed.

**ISSUED: July 20, 2012**

**CONCURRED IN BY:**

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum

Justice Brent D. Benjamin not participating