

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 14, 2012

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

GILBERT D. HAGERMAN, Petitioner

vs.) No. 11-1710 (BOR Appeal No. 2045955)
(Claim No. 2006062324)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JENNIFER L. SMITH, Respondent**

MEMORANDUM DECISION

Petitioner Gilbert D. Hagerman, by Gregory Prudich, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying a request for additional compensable conditions, and denying a request for medical benefits. Jennifer L. Smith, by H. Toney Stroud, her attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 22, 2011, in which the Board affirmed a May 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 23, 2010, Order which denied a request to add degenerative changes and lumbar herniated disc as compensable conditions, and denied a request for medical benefits. 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. Hagerman was working as a truck driver for Jennifer Smith when he was injured. The claim was held compensable for sprain/strain of the lumbar region, pain in the lower leg, and sprain/strain of the thoracic region. On April 23, 2010, the claims administrator denied a request

to add degenerative changes and lumbar herniated disc as compensable components, and denied a request for a neurosurgery consultation.

The Office of Judges, in affirming the claims administrator, found the preponderance of the evidence did not establish that degenerative changes and lumbar herniated disc were related to the compensable injury, nor did it reveal that the neurosurgery consultation was medically related and reasonably required treatment for the compensable injury. Mr. Hagerman disagrees and asserts that he has suffered a progression/aggravation of the compensable injury and thus the additional conditions are compensable and he is entitled to the medical benefits. The Office of Judges noted that degenerative changes which were not compensable were present in an MRI a few months after the compensable injury. It concluded that these degenerative changes have worsened gradually to result in the herniation. The Office of Judges also noted that the request for a neurosurgery consultation related directly to the conditions that were not compensable.

The Office of Judges held that the degenerative changes and lumbar herniated disc, along with the neurosurgery consultation were not related to the compensable injury in this claim. The Board of Review reached the same reasoned conclusion in its decision of November 22, 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: September 14, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTED IN BY:

Chief Justice Menis E. Ketchum