

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**CONSOLIDATION COAL COMPANY,
Employer Below, Petitioner**

FILED
October 4, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0004 (BOR Appeal No. 2046154)
(Claim No. 2005001243)

**LOUIS P. ZACKEY,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner Consolidation Coal Company, by Edward M. George III, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Louis P. Zackey, by M. Jane Glauser, his attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 13, 2011, in which the Board affirmed a July 14, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's February 1, 2011, decision denying the request for psychotherapy. 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.

On June 24, 2004, Mr. Zackey suffered an injury when he was driving a car in a mine and hit his head on a steel beam while going approximately fifteen miles per hour. The claim was held compensable for concussion with no loss of consciousness and neck sprain. On November 23, 2010, Dr. McFadden concluded that psychotherapy would be beneficial to Mr. Zackey and is reasonably necessary for the conditions caused by his compensable occupational injury. On January 20, 2011, Dr. Cooper-Lehki concluded Mr. Zackey had reached maximum medical improvement. The claims administrator denied Mr. Zackey's request for psychotherapy.

The Office of Judges reversed the claims administrator's decision and held that Mr. Zackey was entitled to authorization for psychotherapy, as requested in relation to his compensable injury. On appeal, Consolidation Coal Company disagrees and asserts that Mr. Zackey's psychological condition was good in January of 2010 and that he chose not to undergo psychotherapy, and therefore psychotherapy would not be helpful, needed, or wanted.

The Office of Judges concluded that Mr. Zackey can still receive medical treatment after being found to have reached maximum medical improvement. The claim has been held compensable for the diagnosis of depressive disorder. Even though Dr. Cooper-Lehki found Mr. Zackey had reached maximum medical improvement, she also found that psychotherapy would help his symptoms and is used by many individuals with similar symptoms. Dr. McFadden concluded that psychotherapy would benefit Mr. Zackey and would reduce his levels of discouragement, frustration, and assist him with anger management. He further concluded that psychotherapy was reasonably necessary for the conditions caused by his occupational injury. Ultimately, the Office of Judges held that Mr. Zackey was entitled to psychotherapy for his compensable injury. The Board of Review reached the same reasoned conclusions in its decision of December 13, 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: October 4, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II