

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
September 29, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STEVEN T. LUSK,
Claimant Below, Petitioner

vs.) No. 13-0528 (BOR Appeal No. 2047944)
(Claim No. 2000051696)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

THE GILBERT COMPANIES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Steven T. Lusk, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Mark A. Bramble, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 26, 2013, in which the Board affirmed a December 5, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 4, 2012, decision which denied a request for further treatment because the claim is time-barred. 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. Lusk, a foreman, injured his lower back while cutting timber on a hillside when he slid and fell backwards into a ravine on March 7, 2000. His claim was held compensable for displacement of lumbar intervertebral disc and lumbar sprain. He underwent lumbar spine surgery and has had chronic lower back pain since. A lumbar MRI taken in September of 2007 revealed extensive multilevel degenerative disc disease with desiccation and narrowing of all discs, stenosis, and osteoarthritis.

Mr. Lusk requested a reopening of his claim for medical treatment and the request was denied by the claims administrator on May 4, 2012, because the claim was time-barred. The Office of Judges affirmed the claims administrator's decision in its December 5, 2012, Order. It found that Mr. Lusk has attempted to reopen his claim numerous times but those petitions have been denied. The record does not demonstrate that there have been any benefits authorized after July 13, 2004. Additionally, the Office of Judges noted that Mr. Lusk has extensive degenerative changes and underwent an additional surgery in 2009. It was determined that the current request for treatment was dated April 25, 2012, and though it is possible there is still litigation in process concerning a request for benefits within the five year limitation, the instant request is time-barred by West Virginia Code § 23-4-16(a)(4) (2005). The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its April 26, 2013, decision.

This Court agrees with the reasoning and conclusions of the Board of Review. West Virginia Code § 23-4-16(a)(4) provides that in any case in which treatment has not been rendered for a period of five years, no request for additional treatment shall be granted. There is no indication in the record that Mr. Lusk has received authorized treatment since 2004. His 2012 request to reopen for medical benefits therefore falls outside of the five year time frame.

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: September 29, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II