

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**CHARLES L. CANTLEY,  
Claimant Below, Petitioner**

**FILED**  
December 3, 2014  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**vs.) No. 14-0459** (BOR Appeal No. 2048999)  
(Claim No. 2013017007)

**BAYLOR MINING, INC.,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Charles L. Cantley, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Baylor Mining Inc., by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 15, 2014, in which the Board affirmed a November 25, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges determined that there is not sufficient medical evidence to demonstrate that Mr. Cantley could not have returned to work and therefore found that he is not entitled to temporary total disability benefits at this time. 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. Cantley worked as a coal miner and shuttle car operator for Baylor Mining, Inc. On November 14, 2012, Mr. Cantley was injured while lifting a rock. The claims administrator held the claim compensable for sprain of the lumbar region and found that Mr. Cantley was only disabled from working less than four days due to this injury. Rajesh V. Patel, M.D., found Mr.

Cantley was temporarily and totally disabled due to the work injury. However, MedExpress released Mr. Cantley to return to modified work on November 16, 2012. In addition on the Employee's and Physician's Report of Injury, the physician noted Mr. Cantley was to return to work on November 17, 2012, and was not advised to remain off work more than four days.

The Office of Judges determined that there is not sufficient medical evidence to demonstrate that Mr. Cantley could not have returned to work and therefore, found that he is not entitled to temporary total disability benefits at this time. The Board of Review affirmed the Order of the Office of Judges. On appeal, Mr. Cantley disagrees and asserts that the Board of Review erred in affirming the Order of the Office of Judges and failed to recognize that the Office of Judges added secondary conditions as compensable components, but refused to grant temporary total disability benefits. Baylor Mining, Inc., maintains that Mr. Cantley has failed to prove that he is entitled to temporary total disability benefits for the injury sustained on November 14, 2012, and that Mr. Cantley was released to return to modified work by the physicians at MedExpress. The Office of Judges found that the physicians at MedExpress consistently concluded Mr. Cantley was able to perform modified work. The Office of Judges concluded that the evidence is not sufficient to grant temporary total disability benefits at this time.

This Court agrees with the conclusions of the Office of Judges and the Board of Review. Pursuant to West Virginia Code § 23-4-7a (2005) temporary total disability benefits will cease when a claimant has reached maximum medical improvement, has been released to return to work, or has returned to work, whichever occurs first. Mr. Cantley was released for modified work on November 16, 2012, by physicians at MedExpress. Furthermore, on the November 16, 2012, report of injury form, the physician stated that Mr. Cantley was able to return to modified work on November 17, 2012. Mr. Cantley was also found to have reached maximum medical improvement by Dr. Mukkamala on April 4, 2013, and by Dr. Walker on June 20, 2013. Therefore, Mr. Cantley is not temporary totally disabled and has been released to return to work as early as November 16, 2012.

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: December 3, 2014**

**CONCURRED IN BY:**

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

**DISSENTING:**

Justice Menis E. Ketchum