

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

JAMES D. WHITE
Claimant Below, Petitioner

vs.) No. 35764 (BOR Appeal No. 2043607)
(Claim No. 860042131)

FILED

June 22, 2011

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

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
CONSOLIDATION COAL COMPANY**
Respondents

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 21, 2010, in which the Board reversed a September 25, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's April 24, 2009, Order denying authorization for an MRI of the right knee and an EMG of the right leg. The appeal was timely filed by the petitioner, and a response was filed by the employer. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. Having considered the parties' submissions 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 and that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review reinstated the claims administrator's denial of authorization for an MRI of the right knee and an EMG of the right leg. The request for authorization of the subject medical treatment was made on April 13, 2009. Mr. White's compensable injury actually occurred on January 18, 1986, when he was struck in the right knee by a pipe. The Board of Review based its decision on a June 8, 2009, report of Dr. P. B. Mukkamala which indicated that he had previously evaluated Mr. White in 2004 and 2007 and that Mr. White had no complaints with respect to his right knee. Dr. Mukkamala noted that the compensable injury had healed. Based upon Dr. Mukkamala's report, the Board of Review concluded that

“the necessity for the MRI of the right knee and EMG of the right leg are not related to the compensable condition[.]” (April 21, 2010, Board of Review Order, p. 2).

Upon review of the record, the Court finds that the decision of the Board of Review was based upon a mis-characterization of the evidentiary record. In concluding that the need for an MRI and EMG was not related to the compensable injury, the Board of Review ignored the report of Mr. White’s treating physician, Dr. Yogesh Chand. As the Office of Judges explained in its September 25, 2009, Order, “the history from the claimant is that he has had continued pain and swelling in his right knee since the compensable injury in 1986. The treating physician, Dr. Chand, on numerous occasions, has documented swelling in the right knee and his exam also revealed symptoms and findings that could support a meniscal tear as well as a loose body in [the] right knee. He also believed there may be nerve entrapment caused by the injury to the right knee.” (September 25, 2009, Office of Judges Order, p. 4). The Court agrees with the Office of Judges that “it is quite unusual that the claimant still needs diagnostic tests for the subject compensable injury” given the fact that the injury occurred twenty-three years ago. However, because of Mr. White’s continued complaints of pain and swelling in his right knee as documented by his treating physician, the Court finds that the Board of Review erred when it reversed the decision of the Office of Judges and reinstated the decision of the claims administrator.

For foregoing reasons, the final order of the Board of Review dated April 21, 2010, is reversed, and this case is remanded to the Board of Review to reinstate the September 25, 2009, order of the Office of Judges which authorized payment for an MRI of the right knee and authorized the requested EMG of the right leg.

Reversed and remanded.

ISSUED: June 22, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Menis E. Ketchum
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin