

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

SCA EFiled: Jul 28 2023
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Transaction ID 70511970

E. B.,¹

Petitioner,

Supreme Court Number: 23-409
ICA Number: 22-ICA-278
JCN: 2021004177
DOI: 8-30-2020

and

ALLIANCE COAL, LLC,

Respondent.

E.B.'S REPLY BRIEF IN SUPPORT OF PETITION FOR APPEAL

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¹ By Order dated February 9, 2023, the Intermediate Court of Appeals of West Virginia amended the case style using only Petitioner's initials, stating: "Due to the sensitive facts involved, the Court, on its own motion, amends the case style of this appeal to the style reflected in the case caption set forth in this order. See J. M. v. Altice Technical Service USA, Inc., No. 20-0302, 2021 WL 3030368, at *1 n.1 (W. Va. July 19, 2021) (memorandum decision)."

As fully set forth in his Petition, Petitioner, his spouse, counsel for Petitioner, and even the Board of Review were under the incorrect impression that Dr. Zell was a certified psychiatrist - a fact that was not discovered until after the final decision of the Board of Review and just before oral argument before the Intermediate Court of Appeals. Further, Petitioner showed that the opinions of his treating physicians were all consistent and supported updating his compensable diagnosis to Post Traumatic Stress Disorder (“PTSD”). For good cause shown, Petitioner prayed that this matter would be remanded for the limited and narrow purpose of allowing Petitioner to obtain a psychiatrist to fully evaluate his compensable psychological injuries in accord with 85 CSR 20-12.4. *See State of West Virginia ex rel. Advance Stores Company, Inc.*, 230 W.Va. 464, 740 S.E.2d 59 (2013), *citing* at syllabus point 2, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W.Va. 802, 591 S.E.2d 728 (2003).

In its Response Brief, Alliance Coal, LLC argues that no error was committed and urges this Court to affirm the prior rulings. However, Respondent does not object to the matter being remanded for the limited and narrow purpose requested by Petitioner. Moreover, Respondent sets forth no prejudice that it will experience if the matter is indeed remanded. In point of fact, Respondent does even not address Petitioner’s prayer for remand in any manner whatsoever.

Based on the multitude of consistent medical evidence of record supporting Petitioner’s diagnosis of PTSD, Petitioner should be afforded a complete psychiatric evaluation by a psychiatrist. Remanding this matter for that limited and narrow purpose does not prejudice Respondent in any manner, will provide Petitioner with the evaluation his treating physicians have repeatedly requested, and will allow Petitioner to fully comply with the applicable regulation.

Petitioner has suffered serious compensable physical and mental injuries and has shown good cause for why this matter should be remanded for the limited purpose of allowing Petitioner to obtain an evaluation by a psychiatrist who meets the requirements set for in 85 CSR 20-12.4.

Respectfully submitted,

E. William Harvit

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CERTIFICATE OF SERVICE

I, E. WILLIAM HARVIT, Counsel for the Claimant, hereby certify that a true and exact copy of the foregoing “*E.B.’s Reply Brief in Support of Petition for Appeal*” was served upon the following by File & Serve Xpress system on this 28th day of July, 2023.

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