

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

NORMAN COOPER, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100648 (BOR Appeal No. 2043939)
(Claim No. 2008014134)

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

MEMORANDUM DECISION

Petitioner Norman Cooper, by M. Jane Glauser, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying authorization for medical benefits. Consolidation Coal Company, by Edward George III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 26, 2010, in which the Board affirmed a November 25, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of the medication Vicodin. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition 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. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In this case, Mr. Cooper was working as a coal miner for Consolidation Coal Company. On September 11, 2007, Mr. Cooper suffered a cervical strain while at work when he hit his head on a buggy canopy. The claim was held compensable for a cervical sprain/strain and displacement of a cervical intervertebral disc without myelopathy. Mr. Cooper's treating physician, Dr. Wood,

requested authorization for the medication Vicodin. The claims administrator on July 10, 2009, denied the request.

The Office of Judges held that the petitioner was not entitled to receive the requested medication under West Virginia Code of State Rules § 85-20-53 (2006). Mr. Cooper disagrees and asserts that he is entitled to the medication because it was prescribed by his long-term treating physician, there is no evidence of abuse, and he is monitored regularly. Mr. Cooper provided the request for authorization of medication completed by Dr. Wood.

In its Order affirming the claims administrator's Order denying the requested medication, the Office of Judges found that the preponderance of the evidence did not establish that the petitioner was a candidate for long-term opioid therapy. The Office of Judges held that the requested medication was outside the limits of care established by West Virginia Code of State Rules § 85-20-53 (2006). It further noted that the petitioner failed to provide evidence as to why he is entitled to receive treatment in excess of the guidelines. The Board of Review reached the same reasoned conclusion in its Order of April 26, 2010.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman