

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

KENNETH C. BASHAM, Petitioner

June 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100737 (BOR Appeal No. 2043769)
(Claim No. 2006208680)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
EASTERN ASSOCIATED COAL, LLC, Respondent

MEMORANDUM DECISION

Petitioner Kenneth C. Basham, by Cathy Greiner, his attorney, appeals the decision of the Board of Review. Eastern Associated Coal, by Robert Busse¹, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 22, 2010, in which the Board affirmed an October 23, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 15, 2009, denial of Mr. Basham's request for continued authorization of the medications Flexeril, Motrin, and Hydrocodone. 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.

¹This Court notes that while Mr. Busse filed a response on behalf of Eastern Associated Coal, LLC, as of April 18, 2012, Mr. Busse has withdrawn from the representation of Eastern Associated Coal. Eastern Associated Coal is now represented by Henry Bowen.

In its Order, the Office of Judges held that the medications Flexeril, Motrin, and Hydrocodone do not constitute reasonable and necessary medical treatment in the instant claim. Mr. Basham disputes this finding and asserts, per the opinion of Dr. Rodriguez-Cayro, that Flexeril, Motrin, and Hydrocodone are necessary to enable him to continue working following his February 17, 2006, back injury.

The Office of Judges noted that Dr. Chenault conducted a review of Mr. Basham's medical record. The Office of Judges found that Dr. Chenault's final report indicated that continued use of the medications requested by Mr. Basham would violate the provisions of West Virginia Code of State Rules §§ 85-20-37, 59, 61 (2006). The Office of Judges further found that the opinion of Dr. Rodriguez-Cayro does not establish that this is an extraordinary case warranting departure from the guidelines set forth in West Virginia Code of State Rules §§ 85-20-37, 59, 61. Pursuant to West Virginia Code of State Rules § 85-20-37.5 and § 85-20-61.1, the authorization for these medications is denied. The Board of Review reached the same reasoned conclusion in its decision of April 22, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh