

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CHAD L. MAYNARD, Petitioner

vs.) **No. 101120** (BOR Appeal No. 2044298)
(Claim No. 2005045283)

FILED

September 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
DILLARD SMITH CONSTRUCTION COMPANY,
Respondent**

MEMORANDUM DECISION

Petitioner Chad L. Maynard, by John C. Blair, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the petitioner's request for authorization for a psychiatric consultation. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 17, 2010, in which the Board affirmed a March 11, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 32, 2009, Order, which denied Mr. Maynard authorization for a psychiatric consultation. 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 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. 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.

The Board of Review affirmed the Office of Judges' order, which denied Mr. Maynard's request for a psychiatric consultation. Mr. Maynard argues that he is entitled to this consultation to determine the compensability of his psychiatric conditions, which have been documented since his April 27, 2005, compensable injury. Mr. Maynard also argues that he is entitled to the consultation irrespective of the factual record because West Virginia Code of State Rules § 85-

20-9 requires written authorization for certain medical services, including psychiatric treatment, except for an initial consultation.

The Office of Judges, however, found no evidence linking Mr. Maynard's current psychiatric issues to his compensable injury. Rather, Mr. Maynard was hospitalized for depression long before his compensable injury. Further, Dr. Jeffrey B. Warren, Mr. Maynard's psychiatrist, reported that Mr. Maynard has a "tendency to cry wolf in regard to his symptoms." As a result, Mr. Maynard was unable to demonstrate entitlement to the requested medical treatment. The Board of Review reached the same conclusion in affirming the order of the Office of Judges in its August 17, 2010, decision.

This Court recently held in *Hale v. West Virginia Office of Ins. Comm'r*, 228 W.Va. 781, 724 S.E.2d 752 (2012), that a three-step process must be undertaken when a claimant is seeking to add a psychiatric condition as a compensable injury to his / her claim. The claimant's treating physician refers the claimant to a psychiatrist for an initial consultation; following the initial consultation, the psychiatrist is to make a detailed report consistent with the procedure described in West Virginia Code of State Rules § 85-20-12.4; and the claims administrator, aided by the psychiatrist report, is to determine whether the psychiatric condition should be added as a compensable injury in the claim. Syllabus Point 2, *Hale*. Mr. Maynard was not afforded an initial psychiatric consultation as provided in West Virginia Code of State Rules § 85-20-9.10g.

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, the Court holds that this matter shall be remanded for further proceedings consistent with the three-step process set forth in *Hale*.

Reversed and Remanded.

ISSUED: **September 18, 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