

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ROBERT LEMASTERS, Petitioner

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101178 (BOR Appeal No. 2044326)
(Claim No. 2005010682)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CENTURY ALUMINUM OF WV, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 2, 2010, in which the Board affirmed a March 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 13, 2008, decision denying the compensability of brachial neuritis, rotator cuff syndrome, and lumbar sprain. 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 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 its Order, the Office of Judges held that Mr. Lemasters failed to prove that he suffers from brachial neuritis, rotator cuff syndrome, or lumbar strain, and that they are therefore not compensable components of the claim. Mr. Lemasters disputes this finding and asserts that, per the opinion of Dr. Shramowiat, he has demonstrated that he has symptoms

of brachial neuritis, rotator cuff syndrome, and lumbar strain, and that they are related to his compensable injury.

Specifically, the Office of Judges found that Dr. Shramowiat's opinion that Mr. Lemasters requires additional treatment for brachial neuritis, rotator cuff syndrome, and lumbar strain was unpersuasive when compared with the opinions of Dr. Guberman and Dr. Ranavaya that Mr. Lemasters had reached maximum medical improvement. The Office of Judges also noted that Dr. Shramowiat appears to be of the opinion that Mr. Lemasters's condition is deteriorating, since he is recommending the addition of several diagnoses in the claim; the Office of Judges contrasted this with the opinions of Drs. Guberman and Ranavaya that Mr. Lemasters's condition has stabilized. The Board of Review reached the same reasoned conclusion in its decision of September 2, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 15, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh