

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

OWEN S. CHANNEL JR., Petitioner

July 6, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101341 (BOR Appeal No. 2044386)
(Claim No. 900039418)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
CONSOLIDATION COAL COMPANY, and
NORTH WV REGION FAIRMONT OP, Respondent**

MEMORANDUM DECISION

Petitioner Owen S. Channel Jr., by M. Jane Glauser, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits. Consolidation Coal Company, by Edward George, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 22, 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 June 26, 2009, Order denying the medications Adderall XR and Lithium. 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.

Mr. Channel suffered an injury to his cervical spine while at work on February 9, 1990, and he subsequently developed major depression as a result of his compensable injury. He has been treated by Dr. Jaswinder Chattha, who requested the medications Lithium and Adderall XR to treat

depression. Dr. Chattha discusses that the medications are related to the chronic depression and states in the request, “above medicines are for his depression.” The claims administrator denied the request because the medications were for a condition unrelated to the compensable injury. The Office of Judges affirmed the claims administrator Order, finding the preponderance of the evidence did not establish the medical necessity of the medications.

The Board of Review affirmed the holding that the medications were not medically necessary. On appeal, Mr. Channel argues that the preponderance of the evidence establishes not only that he suffers from major depression but that his condition requires aggressive treatment, with Lithium and Adderall XR being medically necessary.

In its Order affirming the claims administrator’s denial of the requested medications, the Office of Judges noted that both medications were commonly used for conditions not held compensable in this claim. Further, the Office of Judges noted that a simple statement that the drugs were medically necessary without a detailed explanation did not establish a causal connection between the prescribed medications and compensable injury. The Office of Judges also noted that previous Office of Judges Orders have denied the same medications on the basis that the medications do not have a direct relationship with the injury. The Board of Review reached the same reasoned conclusion in its Order of September 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 6, 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