

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JOSEPH S. DINGUS, Petitioner

February 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101358 (BOR Appeal No. 2044377)**
(Claim No. 2006012605)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GREIF BROTHERS CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner, Joseph S. Dingus, by Edwin H. Pancake, his attorney, appeals the Board of Review order denying authorization for a follow-up MRI of the cervical spine and EMG / NCS of the right upper extremity. Greif Brothers, by Steven Wellman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review 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 denial of authorization for MRI and EMG testing. 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, response, 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.

The Board of Review denied Mr. Dingus' request for an MRI and EMG testing finding the requested medical treatment unrelated to Mr. Dingus' compensable injuries. Mr.

Dingus asserts the Board of Review improperly denied authorization for the requested MRI and EMG testing. In support, Mr. Dingus points to the authorization of his prior cervical fusion setting forth a precedent for authorization of the MRI and EMG testing.

The Office of Judges reviewed the relevant evidence and held the preponderance of the evidence does not support authorizing the MRI and EMG testing. (March 11, 2010, Office of Judges Order, p. 5). “Degenerative disc disease and displaced cervical discs have been found to be unrelated to the compensable injury. The Order of March 23, 2006, specifically excluded this diagnosis.” *Id.* The Office of Judges, too, found no basis for granting Mr. Dingus’ request for an MRI and EMG testing or for disputing the Claims Administrator’s findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of September 22, 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, nor is the decision based upon a material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review order denying authorization for MRI and EMG / NCS of the right upper extremity.

Affirmed.

ISSUED: February 24, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum

Justice Brent D. Benjamin