

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

HARRISON L. EPPERLY, Petitioner

February 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101384 (BOR Appeal No. 2044541)**
(Claim No. 2006019034)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
APOGEE COAL COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Harrison L. Epperly, by Steven Thorne, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits. Apogee Coal Company, by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 4, 2010, in which the Board affirmed an April 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's April 10, 2009, Order denying the requested medical benefits. 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.

The Board of Review held the preponderance of the evidence did not establish that the requested medical benefits were medically related and reasonably required to treat the compensable injury. Mr. Epperly argues that his pain has been consistent and is related to

the compensable injury. He contends that the employer submitted no evidence establishing that the current condition is not related to the compensable injury.

In affirming the Claims Administrator's denial of the requested medical benefits, the Office of Judges noted several reasons evident in the record. First, the Office of Judges noted an intervening injury in April 2008 in which the petitioner hurt his neck in a fall from a truck. (April 29, 2009, Office of Judges Order, p. 5). Then it noted that the petitioner was diagnosed with degenerative joint disease and thus concluded the requested treatment was not related to the compensable injury. *Id.* The Board of Review reached the same reasoned conclusion in its October 4, 2010, decision.

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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

ISSUED: : February 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin