

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DONALD R. SPAUN, Petitioner

February 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101394 (BOR Appeal No. 2044405)
(Claim No. 2004019075)

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

MEMORANDUM DECISION

Petitioner Donald R. Spaun, by Edwin Pancake, his attorney, appeals the decision of the Board of Review. Century Aluminum of WV, Inc., by Marion Ray, 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 a March 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 23, 2009, decision denying authorization for a cranial CT scan and the claims administrator's April 3, 2009, decision denying authorization for an office visit with Dr. Lilly. 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 the claims administrator properly denied authorization for a cranial CT scan to rule out possible causes of Mr. Spaun's headaches, and

properly denied authorization for an office visit with Dr. Lilly for the treatment of Mr. Spaun's headaches. Mr. Spaun disputes this finding and asserts that Dr. Lilly's request for authorization for the cranial CT evidences his belief that Mr. Spaun's headaches are related to his compensable injuries.

The Office of Judges found that headache is not a compensable component of the claim. The Office of Judges further found that Mr. Spaun had not presented any evidence to establish a causal connection between his headaches and the compensable injury. The Office of Judges found that further visits with Dr. Lilly could not be authorized because their sole purpose was the treatment of Mr. Spaun's headaches. Additionally, the Office of Judges found that the cranial CT scan could not be authorized because it was requested to investigate the cause of Mr. Spaun's non-compensable headaches. The Board of Review reached the same reasoned conclusion in its decision of October 4, 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: February 17, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum