

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LARRY GILLAND, Petitioner

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

vs.) No. 101501 (BOR Appeal No. 2044512)
(Claim No. 840005400)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FOOTE MINERAL COMPANY, Respondent

MEMORANDUM DECISION

The petitioner, Larry Gilland, by Edwin H. Pancake, his attorney, appeals the Board of Review order denying authorization for a cervical spine MRI. The Office of Counsel, by David L. Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 25, 2010, in which the Board reversed an April 13, 2010, Order of the Workers' Compensation Office of Judges authorizing a cervical spine MRI. In its Order, the Office of Judges reversed the claims administrator's denial of authorization for a cervical spine MRI. The claim was authorized for fractured lumbar vertebrae, fractured larynx, ruptured spleen, intestinal obstruction, fractured thoracic spine, C7-T12 injury, and knee sprain. 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.

Mr. Gilland asserts his request for the cervical spine MRI is sufficiently related to his compensable injuries and should be authorized. Dr. Michael Shramowiat submitted a Medical Statement setting forth that the requested medical treatment was reasonably medically necessary due

to Mr. Gilland's complaints of severe neck pain with numbness in the upper extremities and parasthesias in bilateral upper extremities at the C6 nerve root distribution.

The Office of Judges held Mr. Gilland established by a preponderance of the evidence that the requested cervical spine MRI was reasonably necessary medical treatment. The Office of Judges found that Dr. Shramowiat opined Mr. Gilland's severe neck pain, numbness, and paresthesias are the result of the physical compensable injuries of the claim. Further, Mr. Gilland suffered a fractured thoracic spine at C7-T12 which necessarily involved the cervical spine in the compensable injuries of the claim. Also, Mr. Gilland's fractured larynx and the requisite blow of such severity and magnitude as this injury would have also exerted pressure and trauma on the cervical spine. Therefore, the Office of Judges granted Mr. Gilland's request for the cervical spine MRI.

Thereafter, the Board of Review considered the requested cervical spine MRI and held the Office of Judges erred in authorizing the medical treatment. It found the evidence does not establish a causal connection between the twenty-seven year old injury and the need for an MRI of the cervical spine. Further, an order reflecting that the cervical spine is a compensable condition has not been submitted in the record to be considered. Consequently, the Board of Review reversed the Office of Judges Order authorizing the cervical spine MRI, finding the requested medical treatment unrelated to the compensable injuries in this claim.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provisions, is not so clearly the result of erroneous conclusions of law, nor is it so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the Court affirms the Board of Review Order.

Affirmed.

ISSUED: **April 24, 2012**

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTED IN BY:

Chief Justice Menis E. Ketchum