

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**CHARLES W. MARTIN, Petitioner**  
  
vs.) **No. 101562 (BOR Appeal No. 2044608)**  
**(Claim No. 2009068597)**

**FILED**  
**June 18, 2012**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

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

**MEMORANDUM DECISION**

Petitioner, Charles W. Martin, by Reginald D. Henry, appeals the Board of Review Order denying a referral to Dr. Whitfield and denying the addition of knee sprain as a compensable component of his claim. Magnum Coal Company, by Robert J. Busse, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 9, 2010, in which the Board affirmed a May 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 14, 2009, Order, which denied a referral to Dr. Whitfield to address right knee pain. The Office of Judges also affirmed the claims administrator's July 28, 2009, Order, which denied the addition of a knee sprain as a compensable component. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the parties' submissions 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 affirmed the Office of Judges' Order, which denied the addition of a right knee sprain as a compensable component and denied a referral requested to treat that pain. Mr. Martin argues that the fact that pain did not manifest in his right knee for seven months following his compensable injury is because he was non-weightbearing for much of that time. Mr. Martin also argues that a comparison of pre-compensable injury and post-compensable injury independent medical examinations that include knee flexion and extension measurements speaks not to compensability, but to the amount of impairment.

The Office of Judges noted first that Mr. Martin sustained a prior compensable right knee injury, which resulted in a 3% permanent partial disability award. Further, Mr. Martin's hospital records from immediately following the subject compensable injury document no right knee injury. Mr. Martin made no complaints regarding right knee pain for nearly seven months after the subject compensable injury. Finally, the Office of Judges also compared an independent medical examination conducted following his prior right knee injury with one completed following the subject compensable injury. Both of these reports, completed more than three years apart, document similar levels of right knee extension and flexion. All of this failed to establish by a preponderance of the evidence that Mr. Martin sustained a right knee injury in his subject compensable injury. Thus, the Office of Judges affirmed the denial of Mr. Martin's request to add knee sprain as a compensable component and to refer Mr. Martin for right knee treatment. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 9, 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, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the denials of Mr. Martin's requests to add knee sprain as a compensable component and for a referral for right knee treatment are affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin