

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ELIJAH P. MORRIS, Petitioner

April 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101612 (BOR Appeal No. 2044490)
(Claim No. 2003039712)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PECHINEY ROLLED PRODUCTS, LLC,
Respondent**

MEMORANDUM DECISION

Petitioner Elijah P. Morris, by Edwin Pancake, his attorney, appeals the decision of the Board of Review. Pechiney Rolled Products, LLC, by Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 22, 2010, in which the Board affirmed an April 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 4, 2009, denial of Mr. Morris's request for authorization of the medication Ultram. 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 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 Mr. Morris's request for authorization of the medication Ultram is not medically necessary or reasonably related to the treatment of his December 26, 2002, lumbosacral contusion. Specifically, the Office of Judges found that Mr. Morris suffered an L1 compression fracture in 1999 resulting in a 60% collapse of the vertebral body with mild kyphosis, and that it is more likely that this is the injury causing Mr. Morris's continued pain. Additionally, the Office of Judges found that there is no evidence of record justifying the need for a controlled substance to treat a contusion that was six and a half years old at the time of the request

for authorization of the medication. The Board of Review reached the same reasoned conclusion in its decision of November 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: April 12, 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