

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DAVID E. FRAZIER, Petitioner

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

vs.) No. 11-0094 (BOR Appeal No. 2044712)
(Claim No. 2001034607)

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

MEMORANDUM DECISION

Petitioner David E. Frazier, by Edwin Pancake, his attorney, appeals the decision of the Board of Review. Century Aluminum, 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 December 15, 2010, in which the Board affirmed a June 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 2, 2009, denial of Mr. Frazier's request for authorization of a consultation with Dr. Caraway. 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.

Mr. Frazier worked as a utility laborer and anode setter for Century Aluminum. He was injured on January 3, 2001, when he bent over to pick up an object. The claim was held compensable for thoracic sprain, cervical spine disc displacement, and sprain of unspecified sites of the shoulder and upper arm. On April 10, 2001, Mr. Frazier underwent a C5-6 discectomy. On April 26, 2005, he received a 16% permanent partial disability award.

On November 26, 2002, Dr. Mukkamala found that Mr. Frazier was at maximum medical improvement. On February 12, 2009, Dr. Ellison noted that Mr. Frazier was experiencing increased pain that was not related to any known injury. Dr. Loimil performed an independent medical examination on July 28, 2009, and agreed with Dr. Mukkamala that Mr. Frazier is at maximum medical improvement. Dr. Loimil stated that he feels Mr. Frazier has been over treated and noted that Dr. Caraway, the physician with whom Mr. Frazier seeks a consultation, has treated Mr. Frazier in the past and feels that there is nothing more he can do alleviate his symptoms.

In its Order affirming the claims administrator's decision, the Office of Judges held that a pain management consultation with Dr. Caraway is not medically necessary or reasonably related to Mr. Frazier's compensable injuries. Mr. Frazier disputes this finding and argues that Dr. Ellison, who requested the consultation, is in the best position to determine his treatment needs as his treating physician. Century Aluminum asserts that Mr. Frazier has failed to demonstrate that the requested consultation is necessary for the treatment of, or even related to, his compensable injuries.

Specifically, the Office of Judges found it difficult to relate Mr. Frazier's request to an injury that occurred in 2001. This is especially true in light of the fact that two physicians have determined that Mr. Frazier is at maximum medical improvement. The Office of Judges further found that Mr. Frazier's condition has remained relatively stable following his compensable injury, aside from his February 2009 complaints of increased pain, and that there is not sufficient evidence in the record to warrant authorization of a referral to Dr. Caraway. The Board of Review reached the same reasoned conclusion in its decision of December 15, 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: July 17, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum

Justice Brent D. Benjamin not participating