

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 24, 2012

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

HENRY W. ASTON, Petitioner

**vs.) No. 11-0289 (BOR Appeal No. 2044695)
(Claim No. 2007212997)**

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

MEMORANDUM DECISION

Petitioner, Henry W. Aston, by M. Jane Glauser, his attorney appeals the Board of Review order granting a 5% permanent partial disability award. Consolidation Coal Company by Edward M. George, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated January 11, 2011, in which the Board affirmed a May 25, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Aston's request for an MRI of the left knee and referral to Dr. Thomas Mutschler. 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, 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.

The Board of Review held Mr. Aston failed to present sufficient medical evidence establishing that the requested MRI of the left knee and referral to Dr. Thomas Mutschler is reasonably medically necessary and related to the compensable conditions, contusion to the knee and left knee sprain. Mr. Aston asserts he continues to suffer from pain in the left knee. A prior MRI study conducted after the compensable injury noted intrasubstance signal response seen within the posterior horn of the medical meniscus, thus establishing the medical necessity for the requested medical benefits. Further, Mr. Aston asserts his treating physician, Dr. W. D. Grubbs, opined the requested medical benefits are reasonably related to the compensable injuries in this claim and

should be authorized. However, Dr. Joseph E. Grady II, M.D. opined Mr. Aston was at maximum medical improvement and entitled to a 0% impairment award for the left knee injuries. Additionally, Dr. Mutschler opined Mr. Aston's continued pain is related to osteoarthritis of the knees and not the compensable injury.

The Office of Judges held Dr. Grubbs requested the MRI and referral to Dr. Mutschler approximately one month after Dr. Grady examined Mr. Aston and found maximum medical improvement. Dr. Mutschler, in a report dated June 17, 2008, also opines the majority of Mr. Aston's knee problems were due to osteoarthritis, which was worse in the left knee. The Office of Judges held the request for authorization for further treatment has exceeded the guidelines. Mr. Aston has been found to suffer from osteoarthritis of the knees which is not a compensable component of this claim. The Office of Judges, too, found no basis for authorization of the MRI of the left knee and referral to Dr. Mutschler, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of January 11, 2011.

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 Court affirms the Board of Review order denying Mr. Aston's request for an MRI of the left knee and referral to Dr. Mutschler..

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