

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**PECHINEY ROLLED PRODUCTS,
LLC, Petitioner**

vs.) **No. 11-0451** (BOR Appeal No. 2044851)
(Claim No. 2003018733)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
STANLEY ADKINS, Respondent**

MEMORANDUM DECISION

Petitioner Pechiney Rolled Products, LLC (“Pechiney”), by H. Toney Stroud, its attorney, appeals the decision of the West Virginia Workers’ Compensation Board of Review. Stanley Adkins, by Edwin H. Pancake, his attorney, filed a timely response.

This appeal arises from the Board of Review’s Final Order dated February 14, 2011, in which the Board affirmed a July 21, 2011, Order of the Workers’ Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator’s two separate orders denying authorization for x-rays of the lumbar spine and medications. 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. Adkins sustained a compensable injury on September 19, 2002, and underwent surgery to his low back in April of 2003 and February of 2004. In June of 2009, the claims administrator held that no further payments would be issued after August 16, 2009, due to finding that Mr. Adkins had reached maximum medical improvement and that the treatments exceeded guidelines in the West Virginia Code of State Regulations, Title 85, Series 20. The

June of 2009 decision would later be overturned by the Office of Judges in October of 2009. But before it could be overturned, on September 30, 2009, the claims administrator denied authorization for requested treatments based on the June of 2009 Order.

In the present case, the Office of Judges reversed the claims administrator's orders denying requested x-rays of the lumbar spine and denying the medications Trazadone, Ibuprofen, and Medrol Dose Pak on July 21, 2010. On appeal to both the Board of Review and this Court, Pechiney argues that the Office of Judges exceeded litigation rules, West Virginia Code of State Rules § 93-1-7.5, when it took judicial notice of factual findings in previous Office of Judges Orders related to this claim. The text of the rule in question states that "[t]he Office of Judges may take judicial notice of any decision in the same claim by an administrative law judge, the Appeal Board of Review, or the Supreme Court."

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh