

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

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

PAUL SCOTT, Petitioner

vs.) **No. 11-0470** (BOR Appeal No. 2044885)
(Claim No. 2006205209)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
HOMER LAUGHLIN CHINA CO., Respondent**

MEMORANDUM DECISION

Petitioner Paul Scott, by Patrick Kevin Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Homer Laughlin China Co., by Lucinda Fluharty, its 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 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 15, 2009, Order, denying authorization for a referral to Dr. Michael Bowman for possible surgery. 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. Scott was injured on July 19, 2005 when he stepped on a raised portion of a floor and turned his ankle. At the time, he was working for Homer Laughlin China Co. as a packer/laborer. The injury was held compensable for right ankle sprain/strain. Mr. Scott sought surgical treatment for a tendon rupture and chronic and acute tendonitis in August of 2005. On September 26, 2005, the claims administrator denied his request for surgery on his peroneus brevis tendon

as not part of the compensable claim, which the Office of Judges affirmed on March 12, 2008, and was later affirmed by the Board of Review.

In November of 2007, Mr. Scott was evaluated by Dr. Waleed Mansour for an independent medical evaluation. Dr. Mansour found that claimant had not reached maximum medical improvement. Dr. Mansour later reevaluated Mr. Scott in May of 2008 and found that he had achieved maximum medical improvement by then.

In June and July of 2009, Dr. Kumar Amin diagnosed Mr. Scott with right ankle instability and requested a referral to Dr. Michael Bowman for possible surgery. The claims administrator denied Dr. Amin's request for consultation for possible surgery, based on Dr. Mansour's maximum medical improvement finding, and the earlier March 12, 2008, Order denying surgery. The Office of Judges affirmed the decision in its July 22, 2010, Order, even though Dr. Amin submitted a statement that Mr. Scott's instability was causally related to the compensable injury. The Office of Judges stated that claimant did not submit a closing argument, the only compensable injury is a sprained ankle, the evidence did not support the need for surgical consultation as a result of the compensable injury, and claimant had already reached maximal medical improvement. The Board of Review reached the same reasoned conclusion in its Order of February 14, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 19, 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