

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**BRENT MASON,
Claimant Below, Petitioner**

vs.) **No. 11-1054** (BOR Appeal No. 2045658)
(Claim No. 2009075557)

**COLUMBIAN CHEMICALS HOLDING,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Brent Mason, by John Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Columbian Chemicals Holding, by Maureen Kowalski, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 16, 2011, in which the Board affirmed a February 1, 2011, Order of the Workers' Compensation Office of Judges, granting Mr. Mason a temporary total disability award from January 16, 2009, through May 15, 2009. In its Order, the Office of Judges reversed the claims administrator's April 9, 2010, denial of temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Mason was employed by Columbian Chemicals Holding as a mechanic. On December 1, 2008, he was in a manbasket, working on a manhole above his head. Mr. Mason then jumped out of the basket to the ground, a distance of two to three feet. He immediately felt pain in his lower back. He was diagnosed with a lumbar strain and lumbar radiculopathy. On January 16, 2009, Mr. Mason was examined by Dr. Milton, who signed a Physician's Report of Work Ability, restricting his work ability. The Office of Judges found his claim compensable for lumbar strain but held that the condition of lumbar radiculopathy was not compensable until Mr.

Mason provided additional medical evidence of the condition. Instead, Mr. Mason applied for permanent partial disability benefits. His application was denied by the claims administrator on December 10, 2009. Mr. Mason then applied for temporary total disability benefits for the period of January 16, 2009, through September 2, 2009. The claims administrator denied his application. The Office of Judges, by a February 1, 2011, Order, granted Mr. Mason a temporary total disability award for the period of January 16, 2009, through May 15, 2009. The period was based on the report of Dr. Grady, who determined that as of May 15, 2009, Mr. Mason had reached maximum medical improvement from his lumbar strain. The Board of Review affirmed the Office of Judges' Order, leading to this appeal.

In his petition, Mr. Mason protests the suspension of his temporary total disability benefits as of May 15, 2009, arguing that it should have continued until September 2, 2009, when his physician, Dr. Miller, released him to return to work.

In this case, the Office of Judges found that Mr. Mason had reached maximum degree of medical improvement as of May 15, 2009, when he was examined by Dr. Grady. There is no medical evidence in this case in opposition to Dr. Grady's finding of maximum medical improvement. Instead, Mr. Mason simply suggests an alternative termination date. But in establishing May 15, 2009, as the termination date of Mr. Mason's temporary total disability benefits, the Office of Judges followed the plain language of West Virginia Code § 23-4-7a(e) (2005). We agree with the findings and reasoning of the Office of Judges and the decision of the Board of Review.

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: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II