

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MINGO LOGAN COAL COMPANY, Petitioner

November 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101077 (BOR Appeal No. 2044195)
(Claim No. 20010158475)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KELLY D. DINGESS, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 10, 2010, in which the Board affirmed a March 2, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's and granted Mr. Dingess a total right knee arthroplasty. The appeal was timely filed by the petitioner and a response was filed by Mr. Dingess. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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.

Mingo Logan Coal Company asserts the Board of Review erred in affirming the Office of Judges Order finding Mr. Dingess' total right knee arthroplasty related to the compensable injury. It further states the medical evidence supports a finding that the instant medical procedure relates solely to pre-existing degenerative changes unrelated to the instant compensable injury. Mr. Dingess asserts both Drs. Ramanathan Padmanaban and A. E. Landis opined that the right knee arthroplasty would be necessary in the future.

The Office of Judges reviewed the relevant medical evidence in this matter and determined the total right knee arthroplasty is a reasonable medical treatment secondary to Mr. Dingess' compensable injury. (March 2, 2010, Office of Judges Order, p. 7). It found Dr. Landis previously opined the total right knee arthroplasty would be necessary in the future but recommended complementary treatment until that time. *Id.* Further, it found Dr. Padmanaban's request in the instant matter to be compatible and consistent with Dr. Landis' prior recommendation. *Id.* The Office of Judges determined the claim administrator erred in failing to authorize the instant total right knee arthroplasty as the medical procedure is reasonably related to Mr. Dingess' compensable injury. *Id.* The Board of Review in reviewing the medical evidence and testimony of Mr. Dingess found no basis for disputing the finding of the Office of Judges and affirmed the authorization for the total right knee arthroplasty.

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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the August 20, 2010 order of the Board of Review is affirmed.

Affirmed.

ISSUED: November 2, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh