

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

RONNIE D. ADKINS, Petitioner

December 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101283 (BOR Appeal No. 2044557)
(Claim No. 2009060837)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MAXWELL WOODS HOMEOWNERS
ASSOCIATION, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 2, 2010, in which the Board affirmed a May 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's May 26, 2009, Order denying herniated lumbar disc and spinal stenosis as compensable conditions. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 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 affirmed the holding that the current record did not support the addition of herniated lumbar disc and spinal stenosis as compensable conditions. Mr. Adkins argues that because the conditions were compensable in another claim does not preclude them from being compensable in the current claim. Additionally, he asserts that the

preponderance of the evidence supports a finding that these conditions were a result of his current injury.

In holding that the record did not support the additional compensable components, the Office of Judges noted that further diagnostic testing has been approved that might demonstrate a different outcome. Additionally, the Office of Judges mentioned a pre-existing condition which could have contributed to the current problem. (May 12, 2010, Office of Judges Order, p. 10). The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of September 2, 2010.

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 Board of Review's September 2, 2010, Order is affirmed.

Affirmed.

ISSUED: December 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum