

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RODNEY L. MERINAR, Petitioner

vs.) **No. 11-0024** (BOR Appeal No. 2044477)
(Claim No. 980004447)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
SEIDLER OIL, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Rodney L. Merinar, pro se, appeals the Board of Review Order denying acute care rehabilitation. The Office of Insurance Commissioner, by Gary Mazezka, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 3, 2010, in which the Board reversed a March 31, 2010, Order of the Workers' Compensation Office of Judges granting acute care rehabilitation. In its order, the Office of Judges reversed the claims administrator's denial of Mr. Merinar's request for acute care rehabilitation. 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, 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.

Mr. Merinar suffered a right knee fracture and laceration to the right popliteal artery, which ultimately resulted in a right leg amputation above the knee. Following the amputation Mr. Merinar was fitted with an incorrect length prosthesis and developed low back pain and left knee pain. On September 9, 2002, the Interdisciplinary Examining Board determined that Mr. Merinar was entitled to a permanent total disability award based upon the right knee amputation,

lumbar strain, and depression. Thereafter, Mr. Merinar sought authorization for treatment for his low back condition.

Dr. Robert Gerbo conducted an independent medical evaluation for Mr. Merinar's permanent total disability award. In this report, Dr. Gerbo opined that the low back pain directly resulted from Mr. Merinar's compensable right knee injury and the subsequent use of his leg prosthesis. Dr. Attila Lenkey submitted an opinion that Mr. Merinar's poor prosthetic fit over the years resulted in spinal malignment and pain issues with lumbar strain secondary to gait abnormalities. Dr. L. Charles Kelly also opined that Mr. Merinar's back pain resulted from the right knee amputation and subsequent prosthetic use. An examining physician for West Virginia University Hospitals also opined that the back pain is secondary to Mr. Merinar's right knee amputation.

The Office of Judges reversed the claims administrator and authorized acute care rehabilitation. Mr. Merinar's back pain, the Office of Judges believed, was aggravated by the injury and the application of an improper prosthesis. Thus, the Office of Judges ruled that Mr. Merinar was entitled to reasonable medical benefits in relation to his back injury.

Upon review, the Board of Review found that the Office of Judges erred in authorizing the acute care rehabilitation. Under West Virginia Code § 23-4-3, the claims administrator must provide medically related and reasonably required medical treatment for only conditions that have been held compensable. The Board held that the rehabilitation should not have been authorized, as it was for the alleged back injury, which has never been held a compensable component of the claim. We agree with the reasoning of the Board.

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 Court affirms the Board of Review Order denying Mr. Merinar's request for acute care rehabilitation.

Affirmed.

ISSUED: December 7, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman