

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 5, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DAVID C. KRISE, Petitioner

vs.) **No. 11-0659** (BOR Appeal No. 2045010)
(Claim No. 2009067354)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ST. ALBANS WINDOW MANUFACTURING, INC.,
Respondent**

MEMORANDUM DECISION

Petitioner David C. Krise, by Patrick Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. St. Albans Window Manufacturing, Inc., by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 23, 2011, in which the Board affirmed an August 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 4, 2009, and August 5, 2009, decisions closing the claim for vocational rehabilitation and temporary total disability benefits. 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. Krise was working for St. Albans Window Manufacturing, Inc. as a siding crew leader when he injured his lower back. On November 12, 2008, the claim was held compensable for a lumbar strain. On August 4, 2009, the claims administrator closed the claim for temporary total disability benefits. On August 5, 2009, the claims administrator closed the claim for vocational rehabilitation.

The Office of Judges affirmed the claims administrator's Orders, finding that there was insufficient evidence to establish that Mr. Krise remained temporarily and totally disabled due to the compensable injury, and that a non-compensable condition complicated his rehabilitation efforts. On appeal, Mr. Krise argues that the evidence establishes that he exacerbated the compensable injury during a functional capacity evaluation, and therefore he is still entitled to temporary total disability benefits and vocational rehabilitation. St. Albans Window Manufacturing, Inc. argues that the condition preventing Mr. Krise from working and participating in vocational rehabilitation is not compensable.

In affirming the closure of the claim for temporary total disability benefits and vocational rehabilitation, the Office of Judges noted that the record may demonstrate there was a discogenic problem complicating his recovery and rehabilitation efforts. The Office of Judges found there was no medical evidence finding that Mr. Krise remained temporarily and totally disabled due to the compensable injury after August 4, 2009. Additionally, the Office of Judges noted that Mr. Krise had problems completing his rehabilitation due to a non-compensable condition. Further, the Office of Judges noted that Mr. Krise could reopen his claim for temporary total disability benefits or vocational rehabilitation if sufficient medical evidence demonstrates his eligibility. The Board of Review reached the same reasoned conclusions in its decision of March 23, 2011. We agree with the reasoning and conclusions 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: December 5, 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