

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 17, 2013

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

MARK S. WHITE,
Claimant Below, Petitioner

vs.) **No. 11-1424** (BOR Appeal No. 2045714)
(Claim No. 2009056776)

PROUD EAGLE, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Mark S. White, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Proud Eagle, Inc., by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 19, 2011, in which the Board affirmed a February 25, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 30, 2010, decision denying payment of temporary partial disability benefits from January 5, 2009, through November 30, 2009. 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. White was injured while unloading a truck on August 18, 2008. Following the injury, he worked with Ms. Hathaway, a vocational counselor, to facilitate his return to work. On December 1, 2008, Ms. Hathaway reported that Proud Eagle was willing to make accommodations in order to allow Mr. White to return to work and on January 9, 2009, she noted that Proud Eagle was in the process of developing a return-to-work program. Mr. White returned to work at light duty on January 6, 2009. On July 8, 2009, Ms. Hathaway reported that the case was closed for vocational services because Mr. White was working at his pre-injury job with

permanent work restrictions. On August 3, 2009, the claims administrator closed the claim for vocational services.

In its Order affirming the March 30, 2010, claims administrator's decision, the Office of Judges held that there is insufficient evidence of record to justify the payment of temporary partial disability benefits from January 5, 2009, through November 30, 2009. Mr. White disputes this finding and asserts that the evidence of record demonstrates that he is entitled to temporary partial disability benefits from January 5, 2009, through November 30, 2009.

West Virginia Code § 23-4-9(d) (2005) states that temporary partial disability benefits shall be payable only when an injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan. The Office of Judges found that there is no evidence of record indicating that Mr. White was ever under a rehabilitation plan. It noted that a signed rehabilitation plan was never introduced into evidence, and further found that Ms. Hathaway's coordination of Mr. White's return to work at modified duty does not qualify as a rehabilitation plan. Finally, the Office of Judges found that because there was no rehabilitation plan, there is no justification for payment of temporary partial disability benefits. The Board of Review reached the same reasoned conclusions in its decision of September 19, 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: July 17, 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