

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 1, 2013

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

RALPH MAYLE,
Claimant Below, Petitioner

vs.) **No. 12-0142** (BOR Appeal No. 2046243)
(Claim No. 2008027694)

COMMUNITY PROGRESS COMMITTEE, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ralph Mayle, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. Community Progress Committee, Inc., by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 5, 2012, in which the Board affirmed a July 25, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 29, 2010, decision denying a request to reopen the claim for temporary total disability benefits. 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. Mayle was injured on January 16, 2008, while working for Community Progress Committee, Inc. The claim was subsequently held compensable for unspecified myalgia/myositis. Mr. Mayle left his job with Community Progress Committee, and there is no evidence that he received ongoing treatment for the compensable injury. On June 28, 2010, Mr. Mayle filed an application to reopen the claim for temporary total disability benefits. The claims administrator denied the request to reopen the claim on July 29, 2010.

The Office of Judges affirmed the claims administrator's decision, and held that the preponderance of the evidence did not establish that Mr. Mayle is entitled to temporary total disability benefits. On appeal, Mr. Mayle argues that it was an error to find that he was still working, that he has been unable to work for over a year, and that he needs treatment and temporary total disability benefits in order to recover from the compensable injury. Community Progress Committee maintains that the claim should not be reopened because the evidence does not establish that there has been a progression or aggravation of the compensable injury, and the reopening is requested for non-compensable diagnoses. On June 17, 2010, Dr. Woodford found that Mr. Mayle had recurrent right shoulder pain with an unknown etiology, and the pain was seemingly an extension of the previous pain. Dr. Dauphin reviewed the records, and found that there was a lapse in treatment after the compensable injury which included normal x-rays, and that the current condition was not related to the January 16, 2008, compensable injury.

In affirming the claims administrator's decision, the Office of Judges found that the evidence did not establish that Mr. Mayle was entitled to a reopening of the claim for temporary total disability benefits. It noted that both Dr. Dauphin and Dr. Woodford indicated that Mr. Mayle was still working. Additionally, the Office of Judges noted that the reopening application did not indicate that Mr. Mayle stopped working. The evidence of record indicates that Mr. Mayle was working in some capacity, and thus is not entitled to temporary total disability benefits. The Board of Review reached the same reasoned conclusions in its decision of January 5, 2012. 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: November 1, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum