

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 22, 2013

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

**JOHN R. BONECUTTER,
Claimant Below, Petitioner**

vs.) **No. 12-0318** (BOR Appeal No. 2046310)
(Claim No. 2006208817)

**ALCAN ROLLED PRODUCTS – RAVENSWOOD, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner John R. Bonecutter, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alcan Rolled Products – Ravenswood, LLC, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 9, 2012, in which the Board affirmed an August 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 17, 2010, decision denying Mr. Bonecutter's request for authorization of a TDKS1 motorized wheelchair. 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. Bonecutter sustained a serious injury to his left lower extremity on February 28, 2006, that resulted in an above-the-knee amputation. On November 15, 2010, Mr. Bonecutter's treating physician, Dr. Willock, issued a prescription for a motorized wheelchair. On December 13, 2010, he requested authorization from the claims administrator for a TDKS1 motorized wheelchair. On December 17, 2010, the claims administrator denied Dr. Willock's request.

In its Order affirming the December 17, 2010, claims administrator's decision, the Office of Judges held that a preponderance of the evidence fails to demonstrate that the requested motorized wheelchair is medically related and reasonably required for treatment of the compensable injury. Mr. Bonecutter disputes this finding and asserts that he is entitled to authorization for the requested wheelchair because it was prescribed by his treating physician.

The Office of Judges found that Mr. Bonecutter was provided with a motorized scooter in 2009, and further found that Dr. Willock neither mentioned this prior authorization nor gave any reasoning as to why the scooter Mr. Bonecutter received in 2009 is no longer sufficient. The Office of Judges then found that Mr. Bonecutter failed to support his request for authorization of a motorized wheelchair with evidence demonstrating that the request is medically necessary and reasonably required for treatment of the compensable injury. The Board of Review reached the same reasoned conclusions in its decision of February 9, 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 22, 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