

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

MICHAEL L. TROWBRIDGE,
Claimant Below, Petitioner

vs.) **No. 12-0587** (BOR Appeal No. 2046737)
(Claim No. 2003052829)

CONSOLIDATION COAL, MID-CONT BLUEFIELD,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Michael L. Trowbridge, by M. Jane Glauser, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Consolidation Coal Company, by Edward M. George III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 17, 2012, in which the Board affirmed a December 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 19, 2011, decision denying Mr. Trowbridge's request for authorization of the medications Opana ER and Lortab. 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. Trowbridge injured his back when he stepped into a hole on April 8, 2003, and subsequently underwent two micro discectomies to treat a herniated L3-4 disc. Dr. Chalifoux, Mr. Trowbridge's treating physician, treated him with opioid therapy, which has produced a documented improvement in Mr. Trowbridge's pain level. Mr. Trowbridge was found to be at maximum medical improvement by Dr. Grady on August 27, 2010. On July 7, 2011, Dr. Chalifoux submitted a request to the claims administrator for authorization for the medications

Opana ER and Lortab. On July 19, 2011, the claims administrator denied authorization for the requested medications.

In its Order affirming the July 19, 2011, claims administrator's decision, the Office of Judges held that Mr. Trowbridge has failed to provide the necessary documentation required for continued opioid therapy pursuant to West Virginia Code of State Rules § 85-20 (2006), and has also failed to present evidence sufficient to justify a deviation from the treatment guidelines contained in West Virginia Code of State Rules § 85-20 pursuant to West Virginia Code of State Rules § 85-20-4 (2006). Mr. Trowbridge disputes this finding and asserts, per the opinion of Dr. Chalifoux, that the requested medications are necessary for the continued treatment of his compensable herniated L3-4 disc.

The Office of Judges found that the reports of Dr. Chalifoux do not comply with the strict documentation requirements contained in West Virginia Code of State Rules §§ 85-20-58, 59, 60, 61 (2006), which govern authorization for treatment with opioid medications. Further, West Virginia Code of State Rules § 85-20-60.1(b) states: "Once the worker's condition has reached maximum medical improvement, further treatment with opioids is not payable." On August 27, 2010, Dr. Grady performed an independent medical evaluation and found that Mr. Trowbridge had reached maximum medical improvement. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision of April 17, 2012. We agree with the 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:

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating

