

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 9, 2014

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

STEVEN P. FLEMING,
Claimant Below, Petitioner

vs.) **No. 13-0191** (BOR Appeal No. 2047839)
(Claim No. 850062723)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

NICHOLSON AIR SERVICES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Steven P. Fleming, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jon H. Snyder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 30, 2013, in which the Board affirmed an October 23, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 20, 2011, decision which denied authorization for dental treatment as requested by Bruce Chernow, D.D.S. 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. Fleming, a pilot, was injured in the course of his employment on May 17, 1985, when the airplane he was piloting crashed. He sustained injuries to his face, neck, head, jaw, and teeth. Mr. Fleming was fitted with temporary teeth in 2003, but they have since broken and fallen apart. His dentist, Dr. Chernow, requested multiple procedures and testing for dental repair. The request was denied by the claims administrator on July 20, 2011. The claims administrator stated that there had been no treatment in the claim since May 9, 2000, and there were no medical records available for review. Mr. Fleming stated in a letter dated March 26, 2012, that he was unable to locate his previous dentist and was therefore unable to provide his previous medical records.

The Office of Judges affirmed the claims administrator's denial of the claim on October 23, 2012. It found that pursuant to West Virginia Code § 23-4-1g(a) (2003), the record is absent a credible, preponderant evidentiary foundation to support Mr. Fleming's contention that Dr. Chernow's treatment request is secondary to and reasonably related to the compensable injury. The record contains no medical evidence demonstrating that the requested treatment constitutes reasonable medical treatment secondary to the compensable injury. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its January 30, 2013, decision. This Court agrees with the reasoning and conclusions of the Board of Review. Mr. Fleming has failed to provide any medical evidence to causally connect the requested treatment to the compensable injury. Additionally, pursuant to West Virginia Code § 23-4-16(a)(4) (2005), in any case in which treatment has not been rendered for a period of five years, no request for additional treatment shall be granted. Mr. Fleming last received treatment for the compensable injury in May of 2000. His request falls well outside of the five year time period.

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: June 9, 2014

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman