

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 12, 2014

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

**HARVEY L. CLARK JR.,
Claimant Below, Petitioner**

vs.) **No. 13-1270** (BOR Appeal No. 2048559)
(Claim No. 850060762)

**ITMANN COAL COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Harvey L. Clark Jr., pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated November 22, 2013, in which the Board affirmed a June 25, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 18, 2013, decision denying Mr. Clark's request for authorization of a neurosurgical consultation at Wake Forest Baptist Medical Center. 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. Clark has requested authorization of a consultation with a neurosurgeon at Wake Forest Baptist Medical Center. In support of his request, Mr. Clark submitted a July 10, 2008, lumbar spine MRI report which revealed an apparent L3-L4 surgical fusion, significant spinal stenosis at L2-L3 with varying degrees of impingement at all other levels, and a right-sided disc protrusion at L5-S1. On March 18, 2013, the claims administrator denied Mr. Clark's request for authorization of a neurosurgical consultation based on a finding that there is insufficient medical documentation to justify authorizing the requested consultation. In its Order affirming the March 18, 2013, claims administrator's decision, the Office of Judges held that Mr. Clark has failed to

show that the request for a neurosurgical consultation at Wake Forest Baptist Medical Center constitutes medically necessary and reasonably required treatment in relation to a compensable injury.

The Office of Judges found that the request for authorization of a neurosurgical consultation is not contained in the evidentiary record, and further found that the evidentiary record contains no explanation regarding the medical necessity of the request for a neurosurgical consultation. The Office of Judges then found that the five-year-old lumbar spine MRI report submitted by Mr. Clark in support of his claim is insufficient to support a finding that the requested neurosurgical consultation should be authorized. The Board of Review reached the same reasoned conclusions in its decision of November 22, 2013. 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 12, 2014

CONCURRED IN BY:

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