

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 8, 2013

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

WILLIAM MICHAEL REESE,
Claimant Below, Petitioner

vs.) **No. 11-0946** (BOR Appeal No. 2045200)
(Claim No. 2009086277)

**WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION,**
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner William Michael Reese, by Patrick Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Division of Environmental Protection, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 24, 2011, in which the Board affirmed a September 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 22, 2010, decision denying Mr. Reese's request for authorization of a right hip MRI. 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. Reese sustained multiple injuries on April 1, 2009, when he slipped and fell at work. Mr. Reese alleges that one of the injuries he sustained was a right hip injury. On August 25, 2009, Dr. Mukkamala performed an independent medical evaluation and found that it was unlikely that Mr. Reese injured his right hip on April 1, 2009. Dr. Mukkamala based his recommendation upon x-rays taken on June 18, 2009, which showed advanced degenerative changes that he concluded must be pre-existing. On January 28, 2010, Dr. Thaxton performed a

records review and found that Mr. Reese's request for a right hip MRI does not appear to be related to the April 1, 2009, injury. She noted the degenerative changes present in the June 18, 2009, x-rays, and found that a January 15, 2010, follow-up x-ray revealed aseptic necrosis in the right hip. She further found that it is not likely that the necrosis is a result of the April 1, 2009, injury because traumatic necrosis would be caused by a femoral neck fracture, and Mr. Reese did not fracture his femur. Moreover, Dr. Thaxton stated that Mr. Reese suffers from diabetes mellitus, which is a risk factor for aseptic necrosis.

In its Order affirming the March 22, 2010, claims administrator's decision, the Office of Judges held that Mr. Reese failed to show that the requested right hip MRI is medically necessary and reasonably required treatment for the April 1, 2009, injury. Mr. Reese disputes this finding and asserts that he is entitled to authorization for the right hip MRI, per the request of his treating physician.

The Office of Judges found that there is no evidence of record indicating that the right hip is a compensable component of the claim. The Office of Judges then found that the reports of Drs. Mukkamala and Thaxton, who both found that Mr. Reese's hip condition is not related to the April 1, 2009, injury, to be persuasive. The Office of Judges specifically noted Dr. Mukkamala's finding that the degenerative changes in the right hip are pre-existing, and Dr. Thaxton's finding that the aseptic necrosis present in the right hip is unrelated to the April 1, 2009, injury given the absence of a femoral fracture. The Board of Review reached the same reasoned conclusions in its decision of May 24, 2011. 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: May 8, 2013

CONCURRED IN BY:

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