

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

April 23, 2013

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

**WILLIAM MICHAEL REESE,**  
**Claimant Below, Petitioner**

vs.) **No. 11-1541** (BOR Appeal No. 2045758)  
(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 October 14, 2011, in which the Board affirmed a March 3, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 27, 2010, decision denying Mr. Reese's request for authorization of bilateral knee braces. 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. On August 8, 2010, Dr. Crompton examined Mr. Reese and found that he was experiencing bilateral knee pain with mild to moderate effusion, and then requested bilateral knee braces. On August 26, 2010, Dr. Thaxton performed a records review and found that given the degenerative changes in Mr. Reese's knees present on diagnostic imaging in April of 2009 and Mr. Reese's known history of chronic pain, the medical evidence does not support the conclusion that Mr.

Reese's request for bilateral knee braces is directly and causally related to the April 1, 2009, injury.

In its Order affirming the October 27, 2010, claims administrator's decision, the Office of Judges held that the evidence of record fails to show that Mr. Reese's request for authorization of bilateral knee braces is medically related and reasonably required for treatment of the April 1, 2009, injury. Mr. Reese disputes this finding and asserts that the evidence of record demonstrates that the use of bilateral knee braces is medically related and reasonably required treatment for the April 1, 2009, injury.

The Office of Judges found that Dr. Crompton failed to explain how his request for authorization of bilateral knee braces is related to the April 1, 2009, injury, which has only been held compensable for bilateral knee contusion with respect to the knees. The Office of Judges further found that Dr. Thaxton's report is the most persuasive. The Office of Judges noted that Dr. Thaxton recommended that Mr. Reese's request for authorization of bilateral knee braces not be authorized based on his history of right lower extremity symptoms and pre-claim use of Fetenyl to treat chronic pain, plus the presence of degenerative changes and Dr. Crompton's failure to connect the April 1, 2009, injury with his request for bilateral knee braces. The Board of Review reached the same reasoned conclusions in its decision of October 14, 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: April 23, 2013**

**CONCURRED IN BY:**

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Allen H. Loughry II

**DISSENTING:**

Justice Menis E. Ketchum