

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

ROGER D. COLLETT,
Claimant Below, Petitioner

vs.) **No. 12-0526** (BOR Appeal No. 2046656)
(Claim No. 2011002494)

BALL AEROSOL & SPECIALTY CONTAINER, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Roger D. Collett, by Christopher J. Wallace, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Ball Aerosol & Specialty Container, Inc., by Gary W. Nickerson, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 10, 2012, in which the Board affirmed a November 29, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 21, 2011, decision denying authorization for a pain management consultation. 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. Collett worked for Ball Aerosol & Specialty Container, Inc. On July 16, 2010, Mr. Collett injured his low back while using a wrench. The claims administrator held the injury compensable for a lumbosacral sprain, a lumbar sprain, and a thoracic sprain. The claims administrator later added displacement of lumbar intervertebral disc without myelopathy as a compensable condition of the claim. On December 14, 2010, Dr. Gerszten performed a lumbar fusion on Mr. Collett. Dr. Gerszten noted that there were no complications in the procedure. Almost seven months later, Dr. MacPherson requested a pain management consultation for Mr.

Collett with Dr. Gabriel. Dr. MacPherson justified the request by stating that Mr. Collett had persistent problems following the surgery but Dr. Gerszten would not prescribe any additional pain medication. On July 21, 2011, the claims administrator denied the request for a pain management consultation. Following this denial, Dr. MacPherson submitted additional medical records stating that Mr. Collett was no longer in Dr. Gerszten's postoperative window for prescribing medication but that Mr. Collett had persistent pain due to his compensable injury. Dr. MacPherson stated that there was a soft tissue or bone spur on the right nerve sleeve, which was causing Mr. Collett's pain, and that a pain management consultation was reasonably related and medically necessary to treat Mr. Collett's compensable injury. On November 29, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on April 10, 2012, leading Mr. Collett to appeal.

The Office of Judges concluded that Mr. Collett had not demonstrated that a pain management consultation with Dr. Gabriel was reasonably required medical treatment. The Office of Judges found that the only evidence Mr. Collett provided in favor of his request was the medical statements of Dr. MacPherson. The Office of Judges found that Dr. MacPherson's statements were not sufficient to justify a pain management consultation. The Office of Judges determined that Mr. Collett had undergone surgery almost seven months prior to his request for a consultation and that the request was outside the time limits set out in West Virginia Code of State Rules § 85-20-53 (2006). The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Collett has not demonstrated that the requested pain management consultation is medically related or reasonably necessary to treat his compensable injury. The evidence in the record indicates that the purpose of the consultation is for additional pain medication which would exceed the time limits set out in West Virginia Code of State Rules § 85-20-53. Mr. Collett has not presented sufficient evidence to show that this is an extraordinary case where additional treatment is justified.

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: January 14, 2014

CONCURRED IN BY:

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

Justice Brent D. Benjamin, not participating