

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

THOMAS E. RADER,
Claimant Below, Petitioner

vs.) **No. 12-0628** (BOR Appeal No. 2046600)
(Claim No. 2001031106)

HUNTINGTON ALLOYS CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Thomas E. Rader, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Huntington Alloys Corporation, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 4, 2012, in which the Board affirmed an October 27, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 13, 2011, decision denying authorization for the medication Lortab. 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. Rader was employed by Huntington Alloys Corporation as an equipment operator. On October 18, 2000, Mr. Rader injured his neck from the jarring motion of a machine. The claims administrator held the claim compensable for a cervical strain. Following a course of treatment, Dr. Scott found, in an independent medical evaluation, that Mr. Rader had reached the maximum degree of medical improvement with respect to his neck strain. Dr. Agana then found that Mr. Rader had degenerative disc disease, progressive osteoarthritis, and disc spondylosis. Mr. Rader soon afterwards came under the care of Dr. Caraway, who found that he had cervical

pain, ongoing lower back pain, and degenerative changes. Dr. Caraway planned to treat Mr. Rader's ongoing symptoms with pain medications and made numerous requests for authorization for medication. Dr. Caraway's requests were frequently denied but he continued to prescribe various medications to treat Mr. Rader's pain. Dr. Caraway then requested authorization for a variety of medications including Lortab. But on January 13, 2011, the claims administrator denied the request for Lortab because the medication had been previously denied. Dr. Caraway then issued a medical statement in which he wrote that Mr. Rader's condition was causally related to a work injury and that Lortab should be authorized to treat his ongoing neck pain. On October 27, 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 May 4, 2012, leading Mr. Rader to appeal.

The Office of Judges concluded that a preponderance of the evidence failed to demonstrate that Lortab was medically related and reasonably necessary to treat Mr. Rader's compensable injury. The Office of Judges found that Mr. Rader had frequently made requests for various pain medications but was repeatedly denied. The Office of Judges found that Mr. Rader failed to present any evidence to show that the medication, Lortab, related to his compensable injury. The Office of Judges found that Dr. Caraway's request was not accompanied by a narrative report and that Dr. Caraway's medical statement merely related the medication to Mr. Rader's neck pain. The Office of Judges found that Lortab was a schedule III narcotic and Mr. Rader's current request exceeded the time limits set out under 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. Rader has not demonstrated that the requested medication is reasonably related and medically necessary to treat his compensable injury. Considering that the requested medication is a schedule III narcotic under West Virginia Code of State Rules § 85-20-53.14(b) (2006), Mr. Rader has not presented sufficient evidence to show his continuing need for the medication is related to a neck injury he received over ten years ago and for which he has already been determined to have reached the maximum degree of medical improvement. There is no evidence in the record which would justify deviating from the time limits set out in West Virginia Code of State Rules § 85-20-53.14(b).

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 Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating