

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF REVIEW**

CARLOS D. SILVETI,
Appellant

v.

OHIO VALLEY NURSING HOME, INC.,
Appellee

Appeal No. 2051885
JCN: 2016017643
DOI 01/07/2016

ORDER

The following case is an appeal by the claimant from a final order of the Workers' Compensation Office of Judges dated February 24, 2017, which affirmed the claims administrator's order dated September 29, 2016, denying reimbursement for meal expenses and wage replacement due to an IME on August 8, 2016.

The Workers' Compensation Board of Review has completed a thorough review of the record, briefs, and arguments. As required, the Workers' Compensation Board of Review has evaluated the decision of the Office of Judges in light of the standard of review contained in West Virginia Code § 23-5-12, as well as the applicable statutory language as interpreted by the West Virginia Supreme Court of Appeals.

Upon our review of this case, we have determined to affirm the decision of the Office of Judges. The Board adopts the findings of fact and conclusions of law of the Administrative Law Judge's Decision dated February 24, 2017, which relate to the issue on appeal, and the same are incorporated herein by reference, made a part hereof, and are ratified, confirmed and approved.

Ex. G
7/31/17

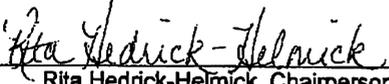
CARLOS D. SILVETI

Appeal No. 2051885

Accordingly, it is ORDERED that the final order of the Workers' Compensation Office of Judges dated February 24, 2017, is hereby AFFIRMED.

From any final decision of the Board, including any order of remand, an application for review may be prosecuted by any party to the Supreme Court of Appeals within thirty days from the date of this order. The appeal shall be filed with Rory L. Perry, II, Clerk of the West Virginia Supreme Court of Appeals, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

DATED: JULY 26, 2017


Rita Hedrick-Helmick, Chairperson

cc: CARLOS D. SILVETI
WILLIAM B. RICHARDSON, JR.
OHIO VALLEY NURSING HOME, INC.
DAVID A. HOLTZAPFEL
BRICKSTREET INSURANCE

17-0746

STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES

IN THE MATTER OF:

JCN: 2016017643

Carlos D. Silveti,
CLAIMANT

DOI: 01/17/2016

and

Ohio Valley Nursing Home, Inc.,
EMPLOYER

DECISION OF ADMINISTRATIVE LAW JUDGE

PARTIES:

Claimant, Carlos D. Silveti, by counsel, William Berkley Richardson, Jr.
Employer, Ohio Valley Nursing Home, Inc., by counsel, David A. Holtzapfel

ISSUE:

The claimant protested the Claim Administrator's Order of September 29, 2016, which denied reimbursement for meal expenses and wage replacement due to an IME on August 8, 2016. The Order relies upon §4 of the State Purchase and Travel regulations. The Order also noted the claimant was receiving temporary total disability benefits on the date of the exam.

DECISION:

It is hereby ORDERED the Claim Administrator's Order of September 29, 2016, is AFFIRMED.

RECORD CONSIDERED:

See attached record considered.

FINDINGS OF FACT:

1. On September 29, 2016, a request for meal expenses and loss of wages for the independent medical evaluation on August 8, 2016 was denied. The claimant protested this Order.

Ex. F

3/2/17

2. In a Claim Administrator's notice dated March 28, 2016, the claimant was notified of his wage replacement weekly benefit rate.

3. On July 19, 2016, Dr. Thrush was notified by the Claim Administrator that an IME of had been scheduled for August 8, 2016 in the subject claim.

4. By Claim Administrator's Order of August 5, 2016, the claimant was granted temporary total disability benefits from July 19, 2016 through September 16, 2016.

5. The claimant submitted a travel voucher dated August 8, 2016, which was introduced into evidence. It noted he travelled 202 miles on that day due to the IME. He notes he spent \$80 for meals at Outback. This was for 2 people. A receipt from Outback was introduced into evidence, noting a charge of \$80 after tip.

6. A check from the Claim Administrator for permanent partial disability had \$27.54 deducted, due to improperly paying a part of the claimant's lost wages on August 8, 2016.

7. On August 19, 2016, the Claim Administrator notified the claimant that his temporary total disability benefits were suspended due to the August 8, 2016 report from Dr. Thrush, who found the claimant had reached his maximum degree of medical improvement.

8. E-mails between the claimant's counsel and an employee of the Claim Administrator were introduced into evidence. These e-mails detail the claimant's request for reimbursements for meals and lost wages.

9. The closing arguments of the claimant and the employer were considered in rendering this Decision.

DISCUSSION:

W.Va. Code §23-4-1c provides for the payment of temporary total disability benefits during the healing or recovery period after an injury. Allen v. State Workers' Compensation Commissioner, 173 W.Va. 238, 314 S.E. 2d 401 (1984). The claimant must submit medical evidence that he is unable to return to employment because of the compensable injury or disease. No temporary total disability benefits will be paid after the claimant has reached his or her maximum degree of medical improvement, is released to return to work, or has returned to work, whichever first occurs. W.Va. Code § 23-4-7a.

W. Va. Code §23-4-1g provides that, for all awards made on and after July 1, 2003, the resolution of any issue shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a

party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

This claim pertains to the request for a little over \$100 for reimbursements due to meals and lost wages, due to an independent medical evaluation that occurred on August 8, 2016. The record demonstrates that the claimant was receiving temporary total disability benefits on August 8, 2016. Temporary total disability benefits are paid as wage replacement when the claimant is physically unable to work. The claimant is not entitled to additional lost of wages when he is receiving temporary total disability benefits.

The claimant attempts to rely upon W. Va. Code §23-4-8(d), which notes that the claimant shall be reimbursed for reasonable travel expenses, as set forth in (e) of this section, incurred in connection with medical examinations, appointments and treatments, including appointments with the claimant's authorized treating physician.

W. Va. Code §23-4-8(e) notes that the claimant's travelling expenses include, at a minimum, reimbursement for meals, lodging and mileage. Reimbursement for travel in a personal motor vehicle shall be at the mileage reimbursement rates contained in the Department of Administration's Purchasing Division Travel Rules. The Office of Judges, Rule 85 CSR 1-15, includes language that is similar to the above-quoted language from W. Va. Code 23-4-8. It also notes, however, that the mileage reimbursement rate shall be based upon the West Virginia Department of Administration's Purchasing Division Travel Rules. The Travel Rules under 4.3 note that meal expenses are reasonable for travel requiring overnight lodging. It is found when all of these rules and statutes are read in pari materia, it is found that the claimant is not entitled to be reimbursed for his meals. The claimant was properly reimbursed for his mileage.

CONCLUSIONS OF LAW:

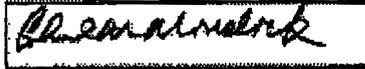
In accordance with the record and facts, the claimant has not demonstrated that he is entitled to be reimbursed for his meals nor his lost wages due to the independent medical evaluation of August 8, 2016.

Accordingly, it is hereby ORDERED the Claim Administrator's Order of September 29, 2016, is AFFIRMED.

APPEAL RIGHTS:

Under the provisions of W.Va. Code §23-5-12, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. **The appeal shall be filed directly with the Workers' Compensation Board of Review at P.O. Box 2628, Charleston, WV, 25329.**

Date: February 24, 2017



**Charles Moredock
Administrative Law Judge**

CMM:lg

cc: CARLOS D SILVETI
WILLIAM BERKLEY RICHARDSON, JR. - COUNSEL FOR CLAIMANT
OHIO VALLEY NURSING HOME INC
DAVID A HOLTZAPFEL - COUNSEL FOR EMPLOYER
BRICKSTREET MUTUAL INSURANCE CO