

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JAMES E. HAWKINS, Petitioner

December 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101257 (BOR Appeal No. 2044103)
(Claim No. 2008004518)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CITY OF CHARLESTON, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 31, 2010, in which the Board affirmed a January 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability for cervical disc herniation. The appeal was timely filed by the petitioner and a response was filed by the City of Charleston. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition, response, and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order, the Board of Review held Mr. Hawkins' cervical disc herniation pre-existed the compensable injury and denied the request to add cervical disc herniation as a compensable component of Mr. Hawkins' claim. Mr. Hawkins asserts the Board of Review erred as a matter of law and fact in failing to find the cervical disc herniation compensable and failing to properly weigh the evidence of record. On the other hand, the City of Charleston argues the Board of Review properly determined Mr. Hawkins cervical disc

herniation pre-existed Mr. Hawkins compensable work-related accident and compensability was properly denied.

In its Order denying compensability for cervical disc herniation, the Office of Judges found Mr. Hawkins failed to present a report from his treating physician, Dr. Robert Crow, establishing that the symptoms are related to the compensable injury. (January 21, 2010, Office of Judges Order, p. 7). It further found both Dr. P. B. Mukkamala and Dr. Paul Bachwitt opined the cervical disc herniation was unrelated to the compensable injury, while the report of Dr. Bruce Guberman found the condition related to the compensable injury. *Id.* As a result, it held the reports of Dr. Mukkamala and Dr. Bachwitt are supported by Mr. Hawkins' medical records documenting a cervical strain on July 6, 1992 and a March 17, 2005, and MRI report documenting degenerative changes at C5-6 and C6-7. *Id.* The Office of Judges, too, found no basis for granting Mr. Hawkins' request for the addition of cervical disc herniation as a compensable component or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of August 31, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review order denying Mr. Hawkins' request for the addition of cervical disc herniation as a compensable component.

Affirmed.

ISSUED: December 16, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum