

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 19, 2013

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

ROGER MEADE,
Claimant Below, Petitioner

vs.) **No. 12-0681** (BOR Appeal No. 2046606)
(Claim No. 2006027703)

TOPLINE QUALITY EXHAUST CENTER,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Roger Meade, by Wendle Cook, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Topline Quality Exhaust Center, by Marion Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 3, 2012, in which the Board affirmed a November 2, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's November 2, 2010, decision denying requests for referral to a pain clinic for pain management and spine injections, to add lumbosacral neuritis or radiculitis, and to approve the medications Motrin and Temazepam. The Office of Judges affirmed the denial for referral to a pain clinic and the addition of lumbosacral neuritis or radiculitis to the claim. The Office of Judges ordered the authorization of the medications Motrin and Temazepam. In that Order, the Office of Judges also affirmed the claims administrator's December 16, 2010, decision denying a request to reopen the claim for permanent partial disability benefits. 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. Meade was employed as a mechanic. On January 28, 2006, while he was lifting a tire in the course of his employment, Mr. Meade sustained a lumbar sprain. The claim was held compensable, and on June 28, 2007, Mr. Meade was awarded a 5% permanent partial disability award. Mr. Meade returned to work and was able to perform his duties with no restrictions until January of 2010. Mr. Meade had an MRI on March 20, 2006, that showed a mild disc protrusion at L5-S1. On January 29, 2010, Mr. Meade underwent another MRI that showed a disc herniation at the L4-L5 region. It was the opinion of his treating physician, Dr. Vellaiappar Somasundaram, that the injury was the result of a progression or aggravation of Mr. Meade's compensable lumbar sprain. Dr. Somasundaram requested referral to a pain clinic, spine injections, the addition of the condition to the claim, and the approval of the medications Motrin and Temazepam. The claims administrator denied the requests in its November 2, 2010, decision. The claims administrator also denied a request to reopen the claim for permanent partial disability benefits in its December 16, 2010, decision.

Mr. Meade's medical reports have been reviewed by multiple doctors. On May 14, 2007, Dr. Anbu Nadar determined that Mr. Meade suffered from lumbar strain with radiculopathy. It was his opinion that Mr. Meade had reached maximum medical improvement. On January 26, 2010, Dr. Randall Short reviewed Mr. Meade's records and determined that the records do not support the conclusion that the petitioner's current problems are the result of a progression or worsening of his compensable injury. On July 5, 2011, Dr. Prasadarao Mukkamala reviewed Mr. Meade's records. It was his opinion that the original injury was a soft tissue injury that should have resolved itself in no more than twelve weeks. In Dr. Mukkamala's opinion, Dr. Somasundaram's diagnosis of radiculopathy was not supported by any objective evidence. A record review by Dr. Paul Bachwitt on July 29, 2011, showed that the herniated disc at L4-5 was a new condition and was not related to the compensable injury.

The November 2, 2011, Order of the Office of Judges affirmed the claims administrator's December 16, 2010, denial of a request to reopen the claim for permanent partial disability benefits. The Office of Judges determined that the evidentiary record indicated that there was no progression or worsening of the compensable injury. It concluded that a modification of the claims administrator's November 2, 2010, decision was necessary. The Office of Judges affirmed the denial of a request for referral to a pain clinic, spine injections, and the addition of lumbosacral neuritis or radiculitis to the claim. However, the Office of Judges ordered the authorization of the medications Motrin and Temazepam. A review of the evidentiary record led the Office of Judge to determine that Mr. Meade has routinely been treated with the medications Motrin and Temazepam, or equivalent medications, for his lumbar sprain since January of 2006. Accordingly, it found that the continuation of these medications was supported by the evidentiary record.

The Board of Review correctly adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its November 2, 2011, Order. This Court agrees with the reasoning and conclusions of the Board of Review. There is enough medical evidence in the record to support the conclusion that Mr. Meade's herniated disc and associated radiculopathy are not related to his compensable lumbar sprain. The evidentiary record does, however, indicate that authorization of the medications Motrin and Temazepam are appropriate.

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: December 19, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Allen H. Loughry II

DISSENING:

Justice Margaret L. Workman

Justice Menis E. Ketchum