

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 8, 2013

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

ROBERT G. THOMAS,
Claimant Below, Petitioner

vs.) **No. 11-0295** (BOR Appeal No. 2044883)
(Claim No. 2008030058)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,**
Commissioner Below, Respondent

and

BERT WOLFE FORD, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robert G. Thomas, by Patrick K. Maroney, appeals the decision of the West Virginia Workers' Compensation Board of Review denying certain medical benefits. Bert Wolfe Ford, Inc., by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 19, 2011, in which the Board affirmed a July 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 10, 2008, order denying authorization for an implanted pain pump or dorsal column stimulator. The Office of Judges also affirmed the claims administrator's February 28, 2009, order denying the request for radiofrequency ablation of the respective medial branches at C4-C7 bilaterally. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition 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 Rules of Appellate Procedure.

Mr. Thomas sustained the subject compensable injury on February 2, 2008, when he fell down stairs at work. His claim was held compensable for a neck sprain / strain and a back contusion. Prior to this injury, however, Mr. Thomas sustained a back injury that necessitated a lumbar percutaneous discectomy. Mr. Thomas continued to experience back pain following this injury.

Mr. Thomas was treated by Dr. Richard Bowman for both the subject compensable injury and the prior back injury. On January 8, 2008 – three weeks prior to the subject injury – Dr. Bowman diagnosed Mr. Thomas with chronic discogenic back pain. On January 31, 2008, Dr. Bowman also noted that Mr. Thomas continued to have low back pain.

Dr. Robert Crow also met with Mr. Thomas, and he recommended an implanted pain pump or dorsal column stimulator. In line with this recommendation, Dr. Bowman sought authorization for this procedure. Dr. Rebecca Thaxton thereafter conducted a Physician Review. She opined that Mr. Thomas's need for a spinal cord stimulator was not directly and causally related to his subject compensable injury. Dr. Thaxton stated that Mr. Thomas's chronic pain, which was present prior to February 2, 2008, necessitated his spinal cord stimulator. Accordingly, the request for a spinal cord stimulator was denied.

Mr. Thomas also seeks authorization for radiofrequency ablation. Dr. J. K. Lilly performed an independent medical evaluation and concluded that radiofrequency lesioning would not likely offer functional improvement. Thus, the request for radiofrequency ablation was denied.

Dr. Charles Wertz also conducted a Physician Review. Although he opined that a spinal cord stimulator was reasonable treatment, he attributed the need to Mr. Thomas's prior back injury. Dr. Wertz concluded that a spinal cord stimulator is not reasonably required medical treatment in this claim.

Dr. P. B. Mukkamala also performed an independent medical evaluation of Mr. Thomas. Dr. Mukkamala found no strong indication for a spinal cord stimulator because Mr. Thomas's pain is not typical of radicular pain. As a result, it is unlikely that Mr. Thomas would benefit from a spinal cord stimulator. Dr. Mukkamala noted no objective clinical signs of radiculopathy, and Mr. Thomas's subjective pain descriptions were not consistent with radicular pain.

Finally, Dr. Bruce Guberman evaluated Mr. Thomas. Dr. Guberman opined that Mr. Thomas should be permitted to proceed with a spinal cord stimulator or Morphine pump.

On appeal, the Office of Judges concluded that Mr. Thomas has failed to establish that the requested treatments are medically related or reasonably required to treat his subject compensable injury. It was found that Mr. Thomas suffered from chronic back pain prior to his subject compensable injury. Drs. Thaxton, Wertz, and Mukkamala all concluded that a spinal cord stimulator is not reasonable medical treatment in this claim, which was held compensable for a back contusion and neck sprain only. Thus, the Office of Judges affirmed the claims administrator's decision because Mr. Thomas failed to establish a causal connection between the

requested treatment and his compensable conditions. The Board of Review affirmed the decision of the Office of Judges. We agree with the Board of Review.

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: May 8, 2013

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Brent D. Benjamin
Justice Menis E. Ketchum