

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 14, 2013

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

LEON J. ZACKOWSKI,
Claimant Below, Petitioner

vs.) **No. 11-0983** (BOR Appeal No. 2045411)
(Claim No. 2006024400)

DODRILL HEATING AND COOLING, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Leon J. Zackowski, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Dodrill Heating and Cooling, LLC, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 3, 2011, in which the Board affirmed a November 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 11, 2010, denial of authorization for hyalgan injections as not related to a compensable component of Mr. Zackowski's injury. 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. Zackowski was tearing down a retaining wall in the employment of Dodrill Heating and Cooling, LLC on January 12, 2006, when a large block from the wall fell on him, injuring his right knee. The injury was held compensable and he received surgery to repair the injury. But the claimant has since had consistent pain in his right knee and the knee frequently gives out. Mr. Zackowski requested authorizations to receive hyalgan injections to reduce the swelling in his knee. The claims administrator denied authorization for additional treatment on May 11, 2010, leading to this appeal.

Under West Virginia Code § 23-4-3(a)(1) (2005), the claims administrator is required to provide reasonably required medical services and treatments related to an employee's compensable injury. In this case, the Office of Judges found that Mr. Zackowski did not meet his burden of proving that the requested treatments were medically and reasonably related to his compensable injury. The only evidence Mr. Zackowski puts forward of his current condition is the February 5, 2010, report from Scott Orthopedic Center, Inc. Although the report demonstrates Mr. Zackowski's need for hyalgan injections, it does not demonstrate that his need is related to his compensable injury. Since Mr. Zackowski did not present any evidence to demonstrate the link between the treatments and his compensable injury, the Office of Judges could not reverse the decision of the claims administrator. The Office of Judges found that Mr. Zackowski had a degenerative condition, chondromalacia of the patella, which more likely resulted from pre-existing and non-work-related injuries than his compensable injury.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the findings and reasoning of the Office of Judges. Mr. Zackowski did not meet his burden of proving that the requested treatments were medically and reasonably related to his compensable injuries. The Board of Review was correct in affirming the Order of the Office of Judges.

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 14, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum