

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 27, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WILLIAM E. JONES,
Claimant Below, Petitioner**

vs.) **No. 11-0985** (BOR Appeal No. 2045362)
(Claim No. 2000024886)

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

and

**CITY OF CHARLESTON,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner William E. Jones, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The City of Charleston, by Marion 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 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 5, 2008, decision denying the reopening of the claim for additional medical treatment. 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. Jones worked as a paramedic and firefighter for the City of Charleston. On October 28, 1999, he sustained an injury lumbar sprain/strain while at work. . On November 5, 2008, the claims administrator denied the reopening of the claim for additional medical treatment because the evidence failed to show any medical justification that the aggravation or progression of the condition is related to this claim.

The Office of Judges affirmed the claims administrator's decision finding that Mr. Jones failed to meet the evidentiary threshold necessary for a reopening of this claim. On appeal, Mr. Jones disagrees and asserts that the City of Charleston submitted medical reports from Dr. Mukkamala in 1997 and Dr. Loimil in 2003 that are irrelevant to the progression and aggravation of his occupational injury because the examinations occurred before the aggravation, and that only Dr. Harbour's medical report is relevant and reliable. The City of Charleston maintains that the Board of Review's Order should be affirmed because Mr. Jones failed to demonstrate that the care he seeks is due to the aggravation or worsening of his compensable back condition.

The Office of Judges considered Dr. Loimil's findings that Mr. Jones had a lumbosacral sprain/strain with question of nerve-root irritation on the right with arthrosis of the low back and impingement of the right shoulder and had reached medical maximum improvement. Dr. Loimil stated that no further treatment was required and that further chiropractic treatment would not change the outcome of Mr. Jones's condition. The Office of Judges also considered Dr. Mukkamala's findings that Mr. Jones had reached medical maximum improvement and that no further chiropractic treatment was required. Dr. Mukkamala based this conclusion on the fact that Mr. Jones's injury was a simple soft-tissue injury in the form of a lumbar sprain and that Mr. Jones has received extensive treatment over the years. The Office of Judges noted that Mr. Jones was given a home-exercise program, and that Mr. Jones indicated that when he does the exercises he feels much better, but he does not perform his exercises consistently. The Office of Judges noted that large portions of Mr. Jones's medical evidence were handwritten and found to be illegible. The Office of Judges affirmed the claim administrator's decision. The Board of Review reached the same reasoned conclusions in its decision of June 3, 2011. We agree with the reasoning and conclusions of 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: March 27, 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