

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ALCON, LLC,
Employer Below, Petitioner

FILED
July 11, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-1393** (BOR Appeal No. 2045725)
(Claim No. 2006018357)

CLEDITH K. KINCAID,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Alcon, LLC, by Alyssa A. Sloan, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Cledith K. Kincaid, by Robert L. Stultz, his attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 12, 2011, in which the Board affirmed a March 10, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's May 11, 2010, decision denying additional compensable conditions. 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. Kincaid injured his wrist, neck, and back while climbing down the steps of his truck when the handrail broke, and he fell five feet to the ground. The claim was held compensable for sprain/strain of wrist, sprain/strain of neck, and sprain/strain lumbar region. On May 11, 2010, the claims administrator reconsidered Mr. Kincaid's request to add additional compensable components and affirmed the denial of adding the conditions of ataxia; cervical, thoracic, and lumbar disc disease; cervical myelopathy; C5/6 disc herniation; and L5/S1 disc herniation as compensable based upon Dr. Short's recommendation.

The Office of Judges reversed the claims administrator's decision and held the following conditions compensable: ataxia; cervical, thoracic, and lumbar disc disease; cervical myelopathy; C5/6 disc herniation; and L5/S1 disc herniation. On appeal, Alcon, LLC disagrees and asserts that the reliable medical and factual evidence on record establishes that Mr. Kincaid's current conditions are not related to the November 10, 2005, injury which clearly resolved within a few months after limited treatment in the claim. Mr. Kincaid maintains that the Board of Review correctly affirmed the Office of Judges' Order because Dr. Miele clearly and precisely related the claimant's symptoms to the work-related injury of November 10, 2005.

The Office of Judges concluded that the record lacked any demonstration that Mr. Kincaid's symptoms were the result of another injury. It stated that the claims administrator relied upon the physician reviews of Dr. Thaxton and Dr. Short that rejected adding the compensable conditions because of the three-year gap in treatment and their opinion that Mr. Kincaid's symptoms resolved upon receiving chiropractic treatment in December of 2005. However, the Office of Judges disagreed and found Mr. Kincaid's deposition credible and noted that he reported ongoing dizziness, headaches, and back problems subsequent to his return to work in December of 2005. The Board of Review reached the same reasoned conclusions in its decision of September 12, 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: July 11, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II