

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

January 14, 2014

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

**PAMELA S. HARDING,  
Claimant Below, Petitioner**

vs.) **No. 12-0515** (BOR Appeal No. 2046479)  
(Claim No. 2006056812)

**UNION STAMPING & ASSEMBLY, INC.,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Pamela S. Harding, by Patrick Kevin Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Union Stamping & Assembly, Inc., by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 28, 2012, in which the Board affirmed a September 16, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 11, 2010, decision denying the request for pain management. 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.

Ms. Harding worked for Union Stamping & Assembly, Inc. as a utility operator. On September 21, 2006, Ms. Harding injured her lower back in the course of and as a result of her employment. The claims administrator held her claim compensable for a lumbar strain. Following a course of treatment, Dr. Guberman found that Ms. Harding had reached the maximum degree of medical improvement with respect to this occupational injury. But Ms. Harding continued to receive treatment from Dr. Calfee up until the middle of 2008 for soreness and stiffness in her back. Then in February of 2010, Ms. Harding presented in Dr. Calfee's office

with complaints of extreme low back pain which radiated into both of her legs. Dr. Calfee believed that Ms. Harding had experienced an exacerbation of her occupational injury and requested that she be referred for pain management treatment. Dr. Calfee's request was then reviewed by Dr. Thaxton, who recommended denying the referral. Dr. Thaxton noted that she had a history of degenerative disc disease and lower extremity sensory polyneuropathy. Dr. Thaxton suggested that these non-compensable conditions could have produced Ms. Harding's current symptoms. Dr. Thaxton also stated that Ms. Harding's current symptoms did not appear to be related to her occupational injury. On May 11, 2010, the claims administrator denied the request for pain management treatment. Dr. Calfee's request was then reviewed by Dr. Mukkamala who found that there was no indication in the medical record for pain management treatment. On September 16, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on March 28, 2012, leading Ms. Harding to appeal.

The Office of Judges concluded that the requested pain management was not medically related and reasonably necessary to treat the September 21, 2006, injury. The Office of Judges found that Ms. Harding had pre-existing low back problems, including degenerative changes, and that her current symptoms were similar to the low back problems she had experienced prior to the September 21, 2006, injury. The Office of Judges found that Dr. Thaxton had identified non-compensable conditions which were more likely the cause of Ms. Harding's current treatment needs. The Office of Judges considered the opinion of Dr. Calfee but found that he only related Ms. Harding's current need for pain management to her occupational injury through conclusory statements. The Office of Judges also noted that there was a significant gap between the most recent treatment Ms. Harding received under this claim and her current request. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Harding's request for pain management exceeds the eight week period set out in West Virginia Code of State Rules § 85-20-37.5 (2006) and the evidence in the record does not indicate that this is an extraordinary case. Ms. Harding has also not presented sufficient evidence to show that the requested pain management referral is medically related and reasonably required to treat her September 21, 2006, lumbar sprain. The only evidence in the record that relates Ms. Harding's current need for treatment to her compensable condition is the conclusory statements of Dr. Calfee. But these statements are not sufficient considering Dr. Thaxton's opinion that non-compensable degenerative and polyneuropathic changes were a more likely cause of Ms. Harding's current need for treatment.

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: January 14, 2014**

**CONCURRED IN BY:**

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

**DISSENTING:**

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating