

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

**JONATHAN SCHREYER,
Claimant Below, Petitioner**

vs.) **No. 12-0517** (BOR Appeal No. 2046528)
(Claim No. 2004026436)

**CITY OF WHEELING,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Jonathan Schreyer, by M. Jane Glauser, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The City of Wheeling, by Aimee L. Morgan-Stern, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 29, 2012, in which the Board affirmed a September 27, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed four claims administrator decisions. The March 18, 2011, decision denied a request to add the diagnoses for chronic pain syndrome and depression as compensable conditions of the claim. A second March 18, 2011, decision closed the claim for vocational rehabilitation. The March 17, 2011, decision closed the claim for case management services. The February 8, 2011, decision denied a request for a psychiatric evaluation in anticipation of a spinal cord stimulator trial. 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. Schreyer worked as a utility worker for the City of Wheeling. On December 2, 2003, Mr. Schreyer was involved in a motor vehicle accident in the course of and resulting from his employment. The accident caused several conditions in the lumbar and cervical regions of his

spine, which were held compensable. Mr. Schreyer received various treatments and services based on this claim. Immediately following the injury, Mr. Schreyer had an MRI taken of his lumbar spine at Wheeling Hospital which revealed degenerative changes at several points. Mr. Schreyer continued to experience episodes of lumbar pain and his symptoms grew progressively worse preventing him from returning to productive work. Following several years of treatment, Dr. Werntz performed an independent medical evaluation of Mr. Schreyer and found that he had no complaints relating to his cervical spine. Dr. Werntz believed that spondylosis was the underlying cause of most of Mr. Schreyer's symptoms. Mark Basich then performed a functional capacity evaluation on Mr. Schreyer. Mr. Basich determined that Mr. Schreyer had an unstable pathology in the lumbar region that was easily provoked by a number of movements. Mr. Basich found that this would prevent him from making a permanent work recommendation for Mr. Schreyer. Dr. Gabriel then requested authorization for a psychological evaluation in anticipation of a trial spinal cord stimulator.

On February 8, 2011, the claims administrator denied the request because the treatment related to lumbar degenerative disc disease which was not a compensable component of the claim. Dr. Hoefner then requested that chronic pain syndrome and depression be added as compensable components of the claim. Dr. Hoefner stated that Mr. Schreyer's longstanding pain led to or aggravated his symptoms of depression. On March 17, 2011, the claims administrator closed the claim for case management services. On March 18, 2011, the claims administrator closed the claim for vocational rehabilitation benefits. In a second decision on March 18, 2011, the claims administrator denied the addition of chronic pain syndrome and depression as compensable conditions of the claim. Following these decisions, Mr. Schreyer was evaluated by Dr. Guberman who found that the need for a spinal cord stimulator was directly and causally related to Mr. Schreyer's compensable injury. But Dr. Guberman found that Mr. Schreyer's problems stemmed from disc disease and degenerative changes. Dr. Werntz then issued an addendum report modifying his prior independent medical evaluation. Dr. Werntz found that Mr. Schreyer's pain was attributable to the slow progression of his degenerative spinal condition and did not recommend adding chronic pain syndrome as a compensable condition of the claim. Dr. Werntz found that Mr. Schreyer's chronic pain could lead to depression but because his pain was not caused by the injury Dr. Werntz did not support the addition of depression as a compensable component of the claim. Dr. Smith then performed a psychiatric evaluation of Mr. Schreyer and found that Mr. Schreyer's depression was not related to his compensable injury because it was well documented prior to the compensable motor vehicle accident. Dr. Smith noted that Mr. Schreyer had been prescribed anti-depression medication prior to his occupational injury. On September 27, 2011, the Office of Judges affirmed the February 8, 2011, March 17, 2011, and both March 18, 2011, claims administrator's decisions. The Board of Review then affirmed the Order of the Office of Judges on March 29, 2012, leading Mr. Schreyer to appeal.

The Office of Judges concluded that a preponderance of the evidence did not support the addition of chronic pain or depression as compensable components of the claim, the authorization for a psychiatric evaluation in anticipation of a trial spinal cord stimulator, or the award of additional vocational rehabilitation benefits. The Office of Judges found that the addition of chronic pain syndrome was not warranted and that Mr. Schreyer did not show that his December 2, 2003, injury caused his depression. The Office of Judges found that Mr. Schreyer

had a significant multilevel degenerative spinal condition. The Office of Judges also found that Dr. Smith confirmed that Mr. Schreyer's depression pre-existed and was not caused by the compensable injury. The Office of Judges also found that the evidence did not support authorizing a psychological evaluation for a spinal cord stimulator because Mr. Schreyer's ongoing pain and need for the treatment was related to his non-compensable conditions. Finally, the Office of Judges found that closing the claim for vocational rehabilitation benefits was appropriate because Mr. Basich's functional capacity evaluation showed that Mr. Schreyer could not return to work. 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. Mr. Schreyer has not demonstrated that the diagnoses of chronic pain syndrome and depression are causally related to his compensable injury. Mr. Schreyer has a significant degenerative spinal condition which includes multilevel degenerative disc disease. The MRI taken at Wheeling Hospital soon after the compensable injury revealed the presence of a non-compensable degenerative spinal condition. The medical evidence in the record shows that Mr. Schreyer's ongoing pain is related to this non-compensable condition. Mr. Schreyer has also not shown that the requested psychiatric evaluation for a spinal cord stimulator is reasonably related and medically necessary to treat his compensable injury. The requested treatment is related to Mr. Schreyer's lumbar degenerative disc disease and not to any compensable conditions of the claim. Mr. Schreyer, finally, has not demonstrated that he is entitled to vocational rehabilitation services. Mr. Basich's functional capacity evaluation demonstrates that Mr. Schreyer is unable to return to permanent employment. Since Mr. Schreyer cannot be assisted in returning to employment, he is not entitled to vocational rehabilitation services.

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 Menis E. Ketchum
Justice Allen H. Loughry II

Justice Brent D. Benjamin, not participating