

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LUCINDA R. ALAMINSKI,
Claimant Below, Petitioner

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0597** (BOR Appeal No. 2046721)
(Claim No. 2005011642)

and

No. 12-0918 (BOR Appeal No. 2046915)
(Claim No. 2004054660)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

CONSOLIDATED TRUCK STOP, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Lucinda R. Alaminski, by M. Jane Glauser, her attorney, appeals two decisions of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed timely responses.

The first appeal, No. 12-0597, arises from the Board of Review's Final Order dated April 17, 2012, in which the Board affirmed a November 28, 2011, Order of the Workers' Compensation Office of Judges.¹ In its Order, the Office of Judges affirmed two claims administrator's Orders dated May 4, 2011, denying Ms. Alaminski's request for Neurontin, Lorcet, Prozac, Darvocet, osteopathic manipulative therapy and physical therapy and May 6, 2011, denying Ms. Alaminski's request for physical therapy.

The second appeal, No. 12-0918, arises from the Board of Review's Final Order dated July 12, 2012, in which the Board affirmed a January 25, 2012, Order of the Workers'

¹ On August 20, 2012, this Court granted Ms. Alaminski's motion to consolidate two appeals, Nos. 12-0597 and 12-0918.

Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's May 4, 2011, Order denying Ms. Alaminski's request for Neurontin, Lorcet, Flexeril, Prozac, Darvocet, osteopathic manipulative therapy and physical therapy. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the cases are 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. Alaminski was employed as a waitress by Consolidated Truck Stop, Inc. when she sustained injuries in two separate work-related occurrences. In the first claim, Ms. Alaminski slipped on a wet floor and injured her arm, right shoulder, and neck on May 6, 2004. Ms. Alaminski's first claim was held compensable for sprain/strain of rotator cuff, other affections of the shoulder region, osteoarthros local shoulder, bicipital tenosynovitis, sprain/strain of shoulder/arm OT, and contusion of the forearm. This Court added the cervical spine and psychological conditions as compensable components by Memorandum Order dated June 1, 2009. The second work related injury occurred on August 24, 2004, when Ms. Alaminski again fell on a wet floor and sustained an injury to her middle and lower back. The second claim was held compensable for lumbago, disorders of the sacrum, and unspecified abdominal pain.

On February 2, 2011, and again on June 2, 2011, Dr. Roe requested Neurontin, Flexeril, Prozac, Darvocet, osteopathic manipulation and physical therapy. The claims administrator denied Ms. Alaminski's request for Neurontin, Lorcet, Flexeril, Prozac, Darvocet, osteopathic manipulative therapy, and physical therapy in regards to No. 12-0597. On May 4, 2011, the claims administrator denied Ms. Alaminski's request for osteopathic manipulative therapy; physical therapy; and for the medications Neurontin, Lorcet, Flexeril, Prozac, and Darvocet in regards to No. 12-0918.

In the first appeal, No. 12-0597, Ms. Alaminski asserts that the preponderance of the evidence shows that the requested medical treatment is medically reasonable and necessary. The West Virginia Office of Insurance Commissioner maintains that in violation of West Virginia Code of State Rules § 85-20.8 (2006), Ms. Alaminski failed to provide the claims administrator with the requested medical information to explain the basis for the requested treatment. West Virginia Code of State Rules § 85-20.8.1 (2006) provides that when a claimant has ongoing treatment, the doctor when requested by the claims administrator must provide a report with the diagnosed conditions with objective and subjective findings. When requested the doctor must also provide the relationship to the compensable injury, an outline of the proposed treatment plan and expected prognosis with an estimate of when treatment should be concluded. Also, if a claimant has not returned to work, the doctor must submit an opinion about whether a vocational assessment is necessary and the doctor's estimate of physical and functional capabilities. The Office of Judges concluded that the record did not reflect any response to the claims

administrator's appeal for additional information about the requested treatment and held that the preponderance of the evidence did not support the requested Neurontin, Lorcet, Flexeril, Prozac, Darvocet, osteopathic manipulative therapy, and physical therapy.

In the second appeal, No. 12-0918, the Office of Judges stated that Darvocet was removed from the United States market in November of 2010, and therefore, no longer an issue on appeal. As to her request for Neurontin, the Office of Judges determined that the record failed to objectively demonstrate that Ms. Alaminski suffers nerve pain as a result of the compensable conditions in this claim. Dr. Langa reported that Ms. Alaminski's cervical MRI was normal and there was no evidence of cervical radiculopathy. Ms. Alaminski's EMG/nerve conduction studies showed no evidence of cervical radiculopathy. The Office of Judges held that the objective evidence failed to demonstrate that Neurontin was medically related and reasonably necessary to treat the compensable conditions in this claim.

Ms. Alaminski also requested the muscle relaxant, Flexeril. Dr. Roe reported only on one instance where Ms. Alaminski complained of experiencing muscles spasms in her low back, not in her neck. Dr. Langa found no muscle spasm to be present in Ms. Alaminski's cervical spine. The Office of Judges, therefore, held that a preponderance of the evidence failed to demonstrate that Flexeril was medically related and reasonably necessary to treat the compensable conditions in this claim.

The Office of Judges further determined that Dr. Roe sought to treat Ms. Alaminski with opioids without an explanation as to why he believes treatment with opioids will work now when this treatment did not work in the past. The Office of Judges determined that the record fails to indicate that a treatment plan and the documented requirements for treatment of chronic non-cancer pain have been established in this claim. The Office of Judges held that Ms. Alaminski has failed to offer persuasive evidence that treatment in excess of the guidelines for the schedule II drug Lorcet should be authorized.

The Office of Judges determined that Dr. Roe failed to relate why physical therapy would be reasonable to treat the compensable injury. The Office of Judges held that Darvocet, Lorcet, Neurontin, Flexeril, and physical therapy are not medically related and reasonably necessary to treat Ms. Alaminski's compensable injury. The Board of Review reached the same reasoned conclusions as the Office of Judges in its decisions of April 17, 2012, and July 12, 2012. 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: January 16, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, not participating.