

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

**MARY ANN ROBERTS,
Claimant Below, Petitioner**

vs.) **No. 12-0784** (BOR Appeal No. 2046872)
(Claim No. 2003001392)

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

and

**AFFORDABLE ELDERLY CARE PROVIDERS, INC. and
MARY ROBERTS
Employers Below, Respondent**

MEMORANDUM DECISION

Petitioner Mary Ann Roberts, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of the Insurance Commissioner, by Mark A. Bramble, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 30, 2012, in which the Board affirmed a January 9, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 29, 2011, decision denying a request for sacroiliac injections. 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. Roberts was injured in the course of her employment on March 1, 2002, when she was lifting a patient into bed. Her claim was held compensable for a sprain/strain of the lumbar region and sciatica. Ms. Roberts underwent two back surgeries and a series of sacroiliac injections which appeared to significantly reduce her back pain. On November 17, 2009, Ms. Roberts again injured her lower back in the course of her employment when she was lifting a patient into the shower. She was diagnosed with a lumbosacral sprain/strain. In a letter written on April 30, 2010, Dr. Gerald Booth indicated that it was his opinion that Ms. Roberts suffered a new injury on November 17, 2009. In May of 2010, Dr. Sammy Sakla, Ms. Roberts's treating physician, referred her to Dr. Joseph Maroon for a neurosurgical evaluation. In his treatment notes, Dr. Maroon indicated that Ms. Roberts was referred to him for symptoms that arose as a result of a work-related injury on November 17, 2009. In June of 2011, Dr. Sakla, recommended that Ms. Roberts undergo sacroiliac joint injections to decrease pain in her lower back that arose as a result of the November 17, 2009, injury. He requested that the injections be covered under her March 1, 2002, injury. The claims administrator denied that request on July 29, 2011, because the sacroiliac joint is not an allowed condition in that claim, and Ms. Roberts suffered an intervening injury on November 17, 2009.

The Office of Judges affirmed the decision of the claims administrator on January 9, 2012. It found that it was clear from the evidentiary record that Dr. Sakla requested the sacroiliac injections to treat lower back pain that arose from the November 17, 2009, injury. In his treatment notes Dr. Sakla noted that Ms. Roberts had been experiencing pain in her back since the November 17, 2009, injury. The Office of Judges concluded from the evidentiary record that there was no evidence to establish that the injections were medically related and reasonably required treatment for the March 1, 2002, injury.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order. This Court agrees with the reasoning and conclusions of the Board of Review. The Board of Review was correct in its determination that the evidentiary record indicates the sacroiliac injections were requested to relieve pain caused by the November 7, 2009, injury. It was also correct in its determination that there is no evidence in the record to indicate that sacroiliac injections are reasonably required and medically necessary treatment for the March 1, 2002, compensable injury.

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