

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 10, 2014

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

JONAH O. ELKINS JR.,
Claimant Below, Petitioner

vs.) **No. 12-0883** (BOR Appeal No. 2046918)
(Claim No. 980044502)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

MONTERRA DEVELOPMENT CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jonah O. Elkins Jr., by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of the Insurance Commissioner, by Jay Craig, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 10, 2012, in which the Board affirmed a February 7, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 19, 2011, decision denying a request for a one-time psychiatric screening and a spinal cord stimulator. 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. Elkins was a construction foreman. He injured his lower back on February 12, 1998, when he was lifting a roll of carpet. His claim was held compensable for lumbar strain. Following the injury, Mr. Elkins's medical records indicate that he consistently complained of lower back pain that radiated into his legs. His treating physician, Richard Bowman II, M.D., requested a spinal cord stimulator on multiple occasions in order to treat the radicular pain. Panos Ignatiadis, M.D., also recommended a spinal cord stimulator for the radiculopathy. However, an electromyography performed on October 15, 2009, showed no evidence of lumbar radiculopathy or generalized neuropathic or myelopathic processes. Mr. Elkins requested a spinal cord stimulator. He also requested a one-time psychiatric screening. Those requests were denied by the claims administrator on July 19, 2011.

The Office of Judges, in its February 7, 2012, Order, affirmed the decision of the claims administrator. The Office of Judges found that Dr. Bowman diagnosed Mr. Elkins with lumbosacral sprain and radiculopathy. His findings were determined to be consistent with the treatment reports of R. M. Bellam, M.D., who indicated that Mr. Elkins consistently complained of left leg pain. The Office of Judges determined, however, that these treatment reports were contradicted by an electromyography that failed to show any evidence of lumbar radiculopathy or generalized neuropathic or myelopathic processes. Near the time of the electromyography, Dr. Bowman diagnosed a herniated lumbar disc without myelopathy. The Office of Judges found that this diagnosis was consistent with the electromyography results. The Office of Judges determined that Dr. Bowman's repeated recommendations for a spinal cord stimulator were recommended to treat Mr. Elkins's radiculopathy. With respect to the psychiatric screening, Dr. Bowman's findings were found to be unpersuasive to establish that Mr. Elkins needed psychiatric intervention. The Office of Judges found that he was diagnosed with sleep apnea and insomnia. It determined, however, that the conditions were not causally connected to the compensable lumbar injury. Based upon these findings, the Office of Judges concluded that Mr. Elkins was not entitled to a spinal cord stimulator or a one-time psychiatric screening, because they were not reasonably required and medically necessary to treat his compensable lumbar strain.

The Board of Review adopted the findings of fact and conclusion of law of the Office of Judges and affirmed its Order in its July 10, 2012, decision. This Court agrees with the reasoning and conclusions of the Board of Review. The Board of Review found that Mr. Elkins's request for a one-time psychological evaluation was properly denied. The Board of Review determined that psychological issues had already been addressed in this claim. This Court previously added anxiety and depression as compensable components of the claim, and the Office of Judges awarded Mr. Elkins a 5% psychiatric permanent partial disability award. Therefore, the decision of the Board of Review is clearly supported by the evidentiary record.

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: March 10, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman