

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

CONNIE J. PRUITT,
Claimant Below, Petitioner

vs.) **No. 12-1219** (BOR Appeal No. 2047203)
(Claim No. 2009090827)

MCDOWELL COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Connie J. Pruitt, by Gregory S. Prudich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. McDowell County Board of Education, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 17, 2012, in which the Board affirmed a May 2, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 23, 2011, decision denying one epidural steroid injection. 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. Pruitt worked as a cook for the McDowell County Board of Education. On March 16, 2009, Ms. Pruitt injured her lower back while lifting boxes of food. An initial MRI following the injury revealed a broad based bulge at L4-5 and degenerative changes at L4-5. Her claim was held compensable for a lumbar strain. Following initial treatment, Dr. Nadar evaluated Ms. Pruitt. Dr. Nadar found that Ms. Pruitt had reached the maximum degree of medical improvement. Ms. Pruitt, however, continued to experience pain in her lower back. Ms. Pruitt then underwent a CT myelogram of her lumbar spine which revealed a herniated disc at L4 on

the left. Based on this report, Dr. Koja requested authorization for a lumbar laminectomy at L4-5. The claims administrator denied his request and the surgery was paid for by private insurance. Following the procedure, Dr. Bachwitt conducted an independent medical evaluation of Ms. Pruitt. He found that the lumbar laminectomy was related to degenerative changes and not her compensable injury. Dr. Bachwitt then found that Ms. Pruitt had reached the maximum degree of medical improvement from her lumbar sprain. Following the surgery, Ms. Pruitt continued to experience pain and Dr. Koja diagnosed her with post-laminectomy syndrome. He then requested authorization for one epidural steroid injection. Dr. Thaxton reviewed his request and recommended against authorizing the treatment. Dr. Thaxton found that the epidural steroid injections appeared to relate to Ms. Pruitt's pre-existing degenerative condition. On December 23, 2011, the claims administrator denied authorization for one epidural steroid injection. On May 2, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on September 17, 2012, leading Ms. Pruitt to appeal.

The Office of Judges concluded that the requested epidural steroid injection for the lumbar spine was not medically related or reasonably required to treat Ms. Pruitt's March 16, 2009, injury. The Office of Judges found Dr. Thaxton's report to be persuasive. The Office of Judges found that Dr. Thaxton had recommended against authorizing the treatment because the injections were related to Ms. Pruitt's pre-existing degenerative spine disease. The Office of Judges found that the treatment was requested following lumbar surgery which was not paid for under this claim. The Office of Judges also found that Dr. Koja related the treatment to Ms. Pruitt's post-surgical condition and not to her compensable injury. 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. Pruitt has not demonstrated that the requested epidural steroid injection is medically related or reasonably necessary to treat her compensable lumbar sprain. The evidence in the record shows that the need for the requested treatment is related to the unauthorized lumbar laminectomy, which was performed to repair a non-compensable herniated disc. Even Dr. Koja's notes relate the treatment to Ms. Pruitt's post-laminectomy syndrome and not her compensable lumbar sprain.

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