

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

JAMIE BURCHAM,
Claimant Below, Petitioner

vs.) **No. 15-0479** (BOR Appeal No. 2050031)
(Claim No. 2014019314)

CITY OF HUNTINGTON,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jamie Burcham, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. City of Huntington, by Scott Sheets, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 23, 2015, in which the Board affirmed a November 6, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 14, 2013, decision denying Mr. Burcham's request for payment of a second neurosurgical consultation, a second podiatry consultation, and a pain clinic referral. 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. Burcham worked as a firefighter for the City of Huntington when he injured his low back and right foot while lifting a patient and tripping over a cot on December 19, 2013. The claim was held compensable for lumbar sprain, neck sprain, and foot sprain. David L. Weinsweig, M.D., a neurosurgeon, saw Mr. Burcham for a follow-up visit for low back and right leg pain on April 8, 2014. Dr. Weinsweig opined that Mr. Burcham suffers from chronic pain and that surgical intervention would not be of any great benefit to him. On April 21, 2014, Allen

Young, M.D., requested a second neurosurgical consultation. He stated that just because one surgeon opines that surgery will not help does not mean a different neurosurgeon will agree. He requested a second podiatry consultation because Mr. Burcham was unhappy with the first podiatrist. Dr. Young further requested authorization for a pain clinic referral and treatment. In an independent medical evaluation on April 25, 2014, Prasadarao B. Mukkamala, M.D., listed the diagnoses as lumbar sprain, neck sprain, and right ankle sprain and only recommended physical therapy. The claims administrator denied the request for payment of a second neurosurgical consultation, a second podiatry consultation, and a pain clinic referral. It stated that only one independent medical evaluation was performed which only recommended physical therapy. The claims administrator further stated that the independent medical evaluation did not indicate that a referral for a second neurosurgical consultation, a second podiatry consultation, and a pain clinic referral were needed.

The Office of Judges affirmed the claims administrator's decision and found that the requested treatment was for non-compensable diagnoses of foraminal stenosis and bulging or herniated discs. Therefore, it concluded that the requested treatment was properly denied as it was not a reasonably required medical treatment as related to the compensable injury. The Board of Review affirmed the Office of Judges' Order. On appeal, Mr. Burcham disagrees and asserts that he has had continual problems with his back and foot and that the conservative treatment has not helped. Therefore, he asserts that he needs further medical treatment and that Dr. Young opined he should receive a second neurosurgical consultation. He also asserts that the second podiatry consultation should be authorized simply because he still has physical symptoms and problems. The City of Huntington maintains that the requested treatment was properly denied because it is not a reasonably required medical treatment for the compensable conditions.

The Office of Judges found that the compensable diagnoses of lumbar sprain, foot sprain, and neck sprain do not support the requested treatment of a second neurosurgical consultation, a second podiatry consultation, and a pain clinic referral. The Office of Judges noted that the MRI showed foraminal stenosis and bulge or herniated disc. Foraminal stenosis and bulging or herniated disc are not compensable conditions in this claim. The Office of Judges concluded that the requested treatment is for these non-compensable conditions and therefore, was properly denied as it is not reasonably required medical treatment as related to the compensable injury. The Board of Review agreed with the findings and conclusions of the Office of Judges' Order.

This Court agrees with the Board of Review's Order. Dr. Mukkamala performed the only independent medical evaluation and did not mention any of the requested medical benefits as medical treatment needed for the compensable injury. Dr. Mukkamala recommended physical therapy as the only reasonably required medical treatment. Mr. Burcham also has non-compensable conditions of foraminal stenosis and bulging or herniated disc as seen by the MRI findings. Mr. Burcham's only supporting evidence was Dr. Young's request which failed to show the medical requests were necessary for the compensable injury. Therefore, Mr. Burcham has failed to show by a preponderance of the evidence that a second neurosurgical consultation, a second podiatry consultation, and a pain clinic referral are reasonably required medical treatment for his compensable conditions.

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: April 12, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Allen H. Loughry II