

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

REBEKAH L. BOLON,
Claimant Below, Petitioner

vs.) **No. 15-0485** (BOR Appeal No. 2049940)
(Claim No. 2014011496)

LOWE'S HOME CENTERS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Rebekah L. Bolon, by Reginald D. Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Lowe's Home Centers, Inc., by James W. Heslep, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 29, 2015, in which the Board affirmed an October 30, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 9, 2014, decision denying Ms. Bolon's request to add the diagnosis of lumbar intervertebral disc syndrome as a compensable condition. 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. Bolon worked as a cashier for Lowe's Home Centers, Inc. She was injured when she stood up while moving a box to scan and had a muscle spasm. She sought medical treatment with her chiropractor, Rocky Sexton, D.C., on October 10, 2013, the date of the injury. Dr. Sexton found that Ms. Bolon had sustained an occupational injury of lumbar spine sprain/strain from lifting and twisting. The claim was held compensable for lumbar sprain/strain. Ms. Bolon is now requesting that the diagnosis of lumbar intervertebral disc syndrome be added as a compensable condition of the claim. Dr. Sexton requested to add lumbar intervertebral disc syndrome as a

compensable condition based on the October 29, 2013, MRI findings. Joseph E. Grady II, M.D., examined Ms. Bolon on April 16, 2014, and stated that he could not definitively associate the MRI findings directly to the work-related injury of October 10, 2013. He further found that Ms. Bolon's current reported symptoms were not associated with radiculopathy and that her physical examination did not reveal any radicular findings. Therefore, Dr. Grady concluded that there is no current information which would lead to Ms. Bolon's symptoms being related to intervertebral disc syndrome. The claims administrator denied the request to add lumbar intervertebral disc syndrome as a compensable condition of the claim because it found no indication that the diagnosis is related to the work injury.

The Office of Judges affirmed the claims administrator's decision and found that based on the preponderance of the evidence Ms. Bolon failed to show that she sustained the condition of lumbar intervertebral disc syndrome in the course of and as a result of her employment. The Board of Review affirmed the Office of Judges' Order. On appeal, Ms. Bolon disagrees and asserts that the diagnosis of lumbar intervertebral disc syndrome is related to her work injury of October 10, 2013, and is supported by the findings of her chiropractor, Dr. Sexton. Lowe's Home Centers, Inc., maintains that the preponderance of the evidence fails to establish the diagnosis of lumbar intervertebral disc syndrome was caused by the work injury.

Ms. Bolon reported to Dr. Sexton on December 30, 2013, that her lower back had not been causing her any symptoms in the several months leading up to the work injury. The Office of Judges found Ms. Bolon did have lower back symptoms in the several months prior to the work injury. In a March 21, 2013, report, Ms. Bolon was seen at Med Express with chief complaints of lower back pain radiating down her right leg. Ms. Bolon was also seen at Med Express on October 3, 2013, seven days before the work injury, for chief complaints of pain in her lower back, right leg, and right arm.

Dr. Sexton based his request to add lumbar intervertebral disc syndrome as a compensable condition on the October 29, 2013, MRI findings which showed shallow central disc protrusion and annular rent at L4-5 and a central disc protrusion at L5-S1. He opined that that these findings correlate perfectly with her clinical presentation of severe low back pain with radiation into the bilateral hips and legs. Dr. Sexton opined that unless there is a previous MRI of the lumbar spine showing that these discs were already injured, it is not even questionable whether the herniated discs are a direct result of the work injury based upon Ms. Bolon's mechanism of injury, clinical presentation, and the perfect correlation with her objective MRI findings. However, when Dr. Grady examined Ms. Bolon on April 16, 2014, she did not report any radicular symptoms, and Dr. Grady found no signs of any current radiculopathy on his examination of her. Dr. Grady noted that Ms. Bolon denied any prior low back injuries or radicular pain from her back. However, he found a September 29, 2011, report from Integrity Chiropractic which states that Ms. Bolon reported lumbosacral symptoms radiating into the right leg and foot. Additionally, Dr. Grady found that the MRI study did reveal some multilevel structural abnormalities, but he could not definitively relate these with the work injury that occurred on October 10, 2013. Therefore, he opined that there is no current information that would lead to Ms. Bolon's symptoms being related to the lumbar intervertebral disc syndrome. Based on Ms. Bolon's previous symptoms and Dr. Grady's findings, the Office of Judges

concluded that Dr. Sexton's findings are not persuasive. The Board of Review agreed with the findings and conclusions of the Office of Judges.

This Court agrees with the Board of Review's Order. Dr. Sexton based his opinion on the findings of the October 29, 2013, MRI. However, there is no previous MRI for comparison. Ms. Bolon has pre-existing conditions from earlier injuries in the same area and even sought treatment seven days prior to the injury for similar low back pain and symptoms. Dr. Grady's report is the most persuasive, and he could not relate the MRI findings to the work injury on October 10, 2013. Dr. Grady also found that Ms. Bolon did not complain of any radicular pain at her examination, and he saw no signs of any current radiculopathy. Therefore, the Board of Review and Office of Judges correctly concluded denied adding lumbar intervertebral disc syndrome as a compensable condition in this claim.

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:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Menis E. Ketchum