

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Adam Q. Farley,
Claimant Below, Petitioner

vs.) No. 21-0800 (BOR Appeal No. 2056651)
(Claim No. 2017003223)

Appalachian Aggregates, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Adam Q. Farley appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review") dated September 17, 2021. The Board of Review affirmed the April 19, 2021, order of the Workers' Compensation Office of Judges ("Office of Judges"), which affirmed the December 21, 2020, order of the claims administrator denying Mr. Farley's request to reopen his claim on a permanent partial disability basis. Mr. Farley asserts that the Board of Review in denying his reopening request.¹ Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review is appropriate. *See* W. Va. R. App. P. 21.

Mr. Farley, a loader operator, was injured in the course of his employment on August 1, 2016, when the loader he was driving was jarred. In the employees' and physicians' report of injury, Mr. Farley stated that the injury occurred at work, but he did not know the exact date. The physician's section listed the injury as cervical sprain and left shoulder sprain. Mr. Farley was able to return to work the following day. Mr. Farley sought treatment from MedExpress the day the injury occurred. He reported numbness and pain in his neck after a work-related whiplash injury. A cervical CT showed only a muscle spasm. He was diagnosed with sprain of joints and ligaments of the neck. On August 4, 2016, he returned for follow up. His neck range of motion had decreased and physical therapy was recommended. The claim was held compensable for neck sprain on August 12, 2016.

Throughout his treatment for his injuries, Mr. Farley reported neck pain, numbness, and weakness in his upper extremities. Prasadara Mukkamala, M.D., performed an independent

¹ Mr. Farley is represented by Reginald D. Henry, and the Respondent Appalachian Aggregates, LLC is represented by Charity K. Lawrence.

medical evaluation on January 4, 2017, in which he opined that Mr. Farley had reached maximum medical improvement for the compensable injury. He stated that no further care was necessary and that Mr. Farley could manage with a home exercise program. Dr. Mukkamala found no indication for referral to a neurosurgeon. Dr. Mukkamala assessed 3% whole person impairment which was adjusted to 5% per Cervical Category II of West Virginia Code of State Rules §85-20-E (2006).

A diagnosis update from MedExpress was completed on January 10, 2017, and indicated that Mr. Farley had neck pain with secondary sprain/strain of the cervical region, cervical radiculopathy, and shoulder sprain. He presented with a whiplash type injury while operating a loader in August of 2016. Cervical X-rays and an MRI were negative. Mr. Farley reported lumbar pain but it was not added to the diagnosis update and did not appear to be related to the compensable injury.

Rebecca Thaxton, M.D., performed a physician review on January 12, 2017, in which she was asked to determine if payment for physical therapy and a neurosurgical referral should be authorized. She opined that neither should be authorized and that Dr. Mukkamala's recommendation of 5% impairment was reliable. Dr. Thaxton found that the MRI showed no cervical spine abnormalities. The October 4, 2016, MedExpress treatment note diagnosed cervical radiculopathy and recommended physical therapy; however, the physical exam did not indicate cervical radiculopathy. Dr. Thaxton noted that on December 29, 2016, Mr. Farley was treated at MedExpress and it was noted that he had worsening neck pain and numbness in both arms and his face. Dr. Thaxton found that it was not mentioned in that note that the November 21, 2016 EMG found no evidence of radiculopathy or that the cervical MRI was negative. Further, she determined that the symptoms were not specific to radiculopathy and therefore, the request for referral to a neurosurgeon was not claim related. She concluded that Mr. Thaxton had exceeded the treatment duration guidelines of West Virginia Code of State Rules §85-20-35.5 (2006). Dr. Mukkamala found Mr. Farley to be at maximum medical improvement and any request for additional treatment was not necessary. Dr. Thaxton agreed. The claims administrator granted a 5% permanent partial disability award on January 24, 2017.

In a January 25, 2017, physician review, James Dauphin, M.D., was asked to review the diagnosis update to add neck pain, cervical radiculopathy, and shoulder pain to the claim. Dr. Dauphin recommended they not be added to the claim. He noted that the claim was compensable for cervical sprain/strain and the cervical MRI and EMG showed no abnormalities. He noted that the October 4, 2016, MedExpress treatment note diagnosed cervical radiculopathy but the examination that day did not find signs of cervical radiculopathy. Mr. Farley was seen again on December 29, 2016, and had numbness in the arms, face, and leg. The normal EMG was not mentioned, nor was the negative cervical MRI. Dr. Dauphin determined that Mr. Farley had exceeded the treatment duration guidelines of West Virginia Code of State Rules §85-20-35.5. Based on all of the evidence, Dr. Dauphin concluded that Mr. Farley is now being treated for noncompensable conditions and further treatment should be denied. The claims administrator closed the claim for temporary total disability benefits on February 2, 2017. The claims administrator denied the addition of neck pain, cervical radiculopathy, and sprained shoulder to the claim on March 7, 2017.

In a February 13, 2017, treatment note, Kyle Muscari, M.D., diagnosed cervicalgia. On February 27, 2017, he diagnosed neck pain and cervical radiculopathy. It was noted that Mr. Farley's neck pain and radiculopathy were chronic conditions. On March 28, 2017, Dr. Muscari read Mr. Farley's cervical MRI and found that there was no evidence of disc herniation, spinal canal stenosis, or neuroforaminal narrowing. He diagnosed neck pain, cervical radiculopathy, and shoulder joint pain. Lana Christiano, M.D., a neurosurgeon, evaluated Mr. Farley on April 7, 2017, and found that the cervical MRI was unremarkable. She recommended conservative treatment only.

In an April 26, 2017, referral order, Dr. Muscari requested that Mr. Farley be seen by a neurologist. He listed the current problems as shoulder joint pain and neck pain. He noted that Mr. Farley has chronic problems including neck pain, cervicalgia, cervical radiculopathy, shoulder pain, and dizziness. In a May 5, 2017, physician review, Syam Stoll, M.D., was asked to determine if a neurological evaluation should be authorized. He found that the only accepted diagnosis in the claim is neck sprain. A cervical MRI showed no findings. An EMG was negative. Dr. Stoll found that Mr. Farley had reached maximum medical improvement and that any further treatment would be for noncompensable conditions. The claims administrator denied a request for a left shoulder MRI and a referral to a neurologist on May 11, 2017.

Dr. Muscari wrote a letter on June 16, 2017, in which he stated that he was treating Mr. Farley for neck pain, cervical radiculopathy, and shoulder pain. Mr. Farley had not been released to return to work because the source of the pain was unidentified. A cervical MRI showed no findings that would be causing the symptoms. Dr. Muscari opined that he was still temporarily and totally disabled. Dr. Muscari further opined that Mr. Farley needed a left shoulder MRI.

In an August 11, 2017, supplemental report, Dr. Mukkamala noted that Mr. Farley had reached maximum medical improvement. He opined that the compensable injury was a soft tissue injury. Mr. Farley originally reported only neck pain. Left shoulder and back symptoms were alleged in later reports. Dr. Mukkamala opined that the denial of the addition of cervical radiculopathy and shoulder sprain was proper. Dr. Mukkamala noted that Dr. Hamilton diagnosed cervical radiculopathy on October 4, 2016. However, he noted normal cervical range of motion and normal strength. Dr. Mukkamala found that Dr. Hamilton's diagnosis was not supported by his own findings. Though Mr. Farley complained of left shoulder pain, it was not documented in the report of injury. An EMG showed no evidence of radiculopathy and Dr. Mukkamala found no evidence of radiculopathy in his examination. Dr. Mukkamala stated that there was no credible, objective evidence of cervical radiculopathy and no objective evidence of a shoulder injury.

After a review of the evidence, the Office of Judges affirmed the claims administrator's decisions denying the addition of neck pain, cervical radiculopathy, and sprained shoulder to the claim and closing the claim for temporary total disability benefits on October 20, 2017. It found that Mr. Farley reached maximum medical improvement for the compensable cervical sprain by January 4, 2017. The Office of Judges noted that when he originally reported his injury, he did not mention the shoulder at all. Dr. Mukkamala opined that the shoulder symptoms were likely coming from the neck. Though Dr. Hamilton diagnosed cervical radiculopathy, his diagnosis was not supported by any objective medical evidence, including his own examination of Mr. Farley. The

Office of Judges also found that Mr. Farley's EMG was negative for cervical radiculopathy. Because Mr. Farley reached maximum medical improvement for the only compensable condition in the claim, the closure of the claim for temporary total disability benefits was affirmed. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on April 24, 2018. In *Farley v. Appalachian Aggregates, LLC*, No. 18-0474, 2018 WL 6040314 (W. Va., Nov. 15, 2018), this Court affirmed, in part, and remanded the claim to the Board of Review directing that left shoulder strain is added to the claim. By Order dated December 21, 2018, the Board of Review directed that Mr. Farley's left shoulder strain is added to the claim.

On April 2, 2020, Mr. Farley requested that his permanent partial disability claim be reopened and that he is sent to another physician to determine whether there has been an aggravation or progression of his cervical spine condition from the occupational injury. In support of his request, an Independent Medical Evaluation report from Robert Walker, M.D., was attached to the reopening request. In the March 25, 2020, report, Dr. Walker noted Mr. Farley underwent surgery for his shoulder in November of 2019.² He also noted that the EMG taken twelve weeks after the injury was normal and that a left shoulder MRI performed several years after the accident revealed a small amount of fluid in the AC joint. A rotator cuff tear was not observed, but the findings raised the question of an injury to the labrum. Dr. Walker took two range of motion measurements in each plane of cervical motion and concluded that Mr. Farley has 8% cervical whole person impairment. Dr. Walker also found 2% whole person impairment for the left shoulder.

By Order dated December 21, 2020, the claims administrator denied the April 2, 2020, reopening request for further permanent partial disability benefits for the cervical spine. The claims administrator determined that the evaluations of Drs. Walker and Soulsby were not accurate assessments of Mr. Farley's impairment due to the compensable injury. Mr. Farley protested the claims administrator's decision and argued that the report of Dr. Walker shows that he has 8% whole person impairment for his compensable cervical injury sustained on August 1, 2016. He further argued that the claims administrator's decision should be reversed because the amount found by Dr. Walker is greater than the 5% he received previously. Mr. Farley requested to be referred to an independent medical evaluator to assess the progression of his disability.

In a Final Decision dated April 19, 2021, the Office of Judges concluded that the claims administrator properly denied Mr. Farley's request for reopening. It was determined that the current reopening was requested for further permanent partial disability for the cervical component of the claim based on the March 25, 2020, report by Dr. Walker, who cited the compensable components of the claim as sprains of joints and ligaments of unspecified parts of the neck and sprain of the left shoulder. The Office of Judges found that Dr. Walker's report did not provide credible evidence of a progression or aggravation of Mr. Farley's cervical impairment, and it was found that his report is flawed insofar as he only recorded two range of motion measurements

² Mr. Farley underwent arthroscopic left shoulder surgery for subacromial decompression, bursal sided rotator cuff tear debridement, and anterior labral debridement on October 18, 2019.

instead of the three as required by the AMA *Guides*. Also, it was found that Dr. Walker placed Mr. Farley in Category IIB, Table 75, which requires an intervertebral disc or other soft tissue lesion, and Mr. Farley's MRIs revealed his soft tissues to be within normal limits with no disc lesions. The Office of Judges found that Dr. Walker's report is not credible in establishing progression or aggravation of the compensable cervical injury and reopening should be denied. The Office of Judges affirmed the December 21, 2020, Order of the claims administrator. On September 17, 2021, the Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Final Decision.

This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code § 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. of Ins. Comm'r*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

After review, we agree with the conclusions of the Office of Judges as affirmed by the Board of Review. The record does not show that Mr. Farley has proven by a preponderance of the evidence that he has suffered a progression or aggravation of the compensable conditions, or facts not previously considered, which would entitle him to greater permanent partial disability benefits than he already received in the claim. The evidentiary record supports the Board of Review's decision.

Affirmed.

ISSUED: June 13, 2023

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Tim Armstead
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn