

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
April 12, 2016
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

ENOCH WILLIAMS,
Claimant Below, Petitioner

vs.) No. 15-0476 (BOR Appeal No. 2050057)
(Claim No. 2014025297)

ALPHA NATURAL RESOURCES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Enoch Williams, by Stephen P. New, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alpha Natural Resources, Inc., by Robert J. Busse, 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 26, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 30, 2014, decision denying Mr. Williams's request to authorize the excision of a soft tissue mass. 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. Williams was working as a roof bolter for Alpha Natural Resources, Inc., when he was struck by a rock and knocked to the ground on January 24, 2014. The claim was held compensable for contusion of the neck and the back. Mr. Williams saw Scott Killmer, M.D., his treating physician, on March 24, 2014, and Dr. Killmer noted that the MRI revealed a soft tissue mass most consistent with a lipoma. He further noted that Mr. Williams stated that he never had a mass before the work injury. On April 10, 2014, Dr. Killmer performed an excision of the soft tissue mass. Mr. Williams is now requesting authorization of payment for the excision of the soft

tissue mass. In a physician review, Rebecca Thaxton, M.D., recommended denying payment for the April 10, 2014, surgery because she concluded that it was likely an incidental finding following the work injury and not likely caused by the work injury. In addition, Prasadarao B. Mukkamala, M.D., performed an independent medical evaluation and opined that the lipoma was not causally related to the compensable injury of January 24, 2014. The claims administrator first denied Mr. Williams's request on May 19, 2014. Mr. Williams requested that the denial be reconsidered. On June 24, 2014, the StreetSelect Grievance Board convened to consider Mr. Williams's request for reconsideration of the denial for the authorization of the excision of the soft tissue mass. The Board found this to be an incidental finding and not related to the work injury. It found the denial appropriate and recommended that it be affirmed. On June 30, 2014, the claims administrator reconsidered the May 19, 2014, denial and affirmed its previous denial in reliance on the findings of the StreetSelect Grievance Board.

The Office of Judges affirmed the claims administrator's decision and found that the record fails to establish a credible, preponderant evidentiary foundation that the removal of the soft tissue mass on April 10, 2014, was reasonable medical treatment secondary to the compensable injury. The Board of Review agreed with the Office of Judges. On appeal, Mr. Williams disagrees and asserts that the soft tissue mass was caused by a direct trauma when he was struck by a rock and fell. Alpha Natural Resources, Inc., maintains that Mr. Williams's lipoma is not in any way related to the January 24, 2014, work injury.

The Office of Judges found that the claims administrator's evidentiary support for its denial is prefaced upon the opinion of Dr. Thaxton in her physician review who concluded that it was likely an incidental finding following the work injury and not likely caused by the work injury, as well as Dr. Mukkamala's statement. Dr. Mukkamala opined that the excised lipoma was not causally related to the compensable injury but rather was an incidental finding. Mr. Williams's only supporting evidence is Dr. Killmer's records that noted Mr. Williams stated the mass was not present prior to the compensable injury. The Office of Judges found that the rest of Mr. Williams's evidence is silent on any medical corroboration that the soft tissue mass was secondary to the compensable injury. 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. Thaxton and Dr. Mukkamala both opined that Mr. Williams's excised lipoma was an incidental finding and not related to the work injury. The StreetSelect Grievance Board also found that Mr. Williams's soft tissue mass was an incidental finding and not related to the work injury. In addition, Mr. Williams relies solely on Dr. Killmer's records that merely noted Mr. Williams stated the mass was not present prior to the compensable injury. Mr. Williams has failed to prove that the excision of the lipoma was related to the compensable injury, and therefore, the authorization of payment for the excision of the soft tissue mass was properly denied.

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 Margaret L. Workman

Justice Allen H. Loughry II

Justice Brent D. Benjamin, disqualified.