

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 24, 2012

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

RONALD E. WILLIAMS, Petitioner

**vs.) No. 101498 (BOR Appeal No. 2044521)
(Claim No. 2009093272)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PERFORMANCE COAL COMPANY, Respondent**

MEMORANDUM DECISION

The Petitioner, Ronald E. Williams, by Reginald D. Henry, his attorney, appeals the Board of Review order denying inclusion of diagnosis code 722.2, disc displacement as a compensable component of his claim; denying reopening for temporary total disability benefits; denying lumbar facet joint injections; and denying authorization for eight physical medicine visits. Performance Coal Company, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 25, 2010, in which the Board affirmed an April 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Williams' request for consultation with the Center for Pain Relief, inclusion of the diagnosis code 722.2, disc displacement; denying reopening for temporary total disability; denying request for lumbar facet joint injections; and denying authorization for eight physical medicine visits. The claim was previously approved for lumbosacral sprain. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition, response, and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review held the requested medical treatments, consultation with Center for Pain Relief, lumbar facet joint injections, and eight physical medicine visits were not supported by the medical evidence. Mr. Williams seeks the addition of Diagnosis Code 722.2, disc displacement, to the claim, which the Board of Review denied finding the medical evidence does not support the diagnosis. Mr. Williams acknowledges the radiologist accurately interpreted the spine MRI results showing no disc herniation. However, Mr. Williams asserts Dr. Patel found lumbar degenerative disc disease, spondylosis, lumbar sprain, foraminal narrowing of the L5-S1 neural foramen, and lumbar radiculitis. Dr. Kominsky also opined Mr. Williams suffers from lumbar joint dysfunction, lumbar facet syndrome, and disc defect. Despite the absence of any medical evidence finding disc herniation, Mr. Williams seeks the additional diagnosis code 722.2, disc displacement, to his claim. The Office of Judges held the most persuasive evidence regarding this diagnosis is the lumbar spine MRI, which found multilevel disc degeneration and osteoarthritic changes, without evidence of disc herniation. According to the Office of Judges such diagnostic findings hardly support the inclusion of the protested diagnosis.

Mr. Williams asserts Dr. Patel and Dr. Kominsky both opined the requested medical treatment is reasonably necessary treatment for Mr. Williams' continued complaints of pain. This finding by both Dr. Patel and Dr. Kominsky is sufficient to authorize the requested treatment. The Office of Judges considered Mr. Williams request for the medical treatment and West Virginia Code of State Rules §§ 85-20-37.5 and 85-20-4.1 to determine Mr. Williams failed to show the requested medical treatment is related to an "extraordinary" case requiring more than the expected maximum four weeks of care for lumbar sprain / strain claims. The Office of Judges concluded a demonstration has not been made that the instant claim is in any way extraordinary or that the treatments requested are reasonable and necessary.

Additionally, the Board of Review denied Mr. Williams' request to reopen the claim for temporary total disability benefits finding there was insufficient evidence to support the reopening request. Mr. Williams asserts his continued complaints of pain support the reopening request and the Board of Review erred in denying the request. The Office of Judges found Dr. Mukkamala's conclusion that Mr. Williams was at maximum medical improvement dispositive in determining whether Mr. Williams suffered from an aggravation or progression of the lumbar spine injury. The Office of Judges found the reopening request turned on whether Mr. Williams' condition is related to the occupational injuries or to a non-occupational cause. It, therefore, reviewed Mr. Williams' application for temporary total disability benefits reflecting the basis of the request as continuing complaints of severe low back pain, right leg numbness, and developing weakness. The Office of Judges concluded that there is no indication from the report of [Mr. Williams'] treating physician that the treatments suggested for him are any more than palliative in nature and the report of Dr. Mukkamala concluding [Mr. Williams] has reached his maximum degree of medical improvement based upon the history of this case is more persuasive.

The Office of Judges, too, found no basis for granting Mr. Williams' request for consultation with the Center for Pain Relief, lumbar facet joint injections, eight physical medicine visits; reopening of the claim for temporary total disability; or inclusion of Diagnosis Code 722.2; disc

displacement, or for disputing the claims administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 25, 2010.

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 Court affirms the Board of Review Order denying Mr. Williams' request for consultation with the Center for Pain Relief, lumbar facet joint injections; eight physical medicine visits; reopening of the claim for temporary total disability; or inclusion of Diagnosis Code 722.2, disc displacement.

Affirmed.

ISSUED: April 24, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTED IN BY:

Chief Justice Menis E. Ketchum

Justice Brent D. Benjamin (Disqualified)