

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 8, 2013

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

LISA DIANE CLEVINGER,
Claimant Below, Petitioner

vs.) **No. 11-0897** (BOR Appeal No. 2045241/2045242)
(Claim No. 2010105458)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

OHIO VALLEY MEDICAL CENTER, INC.
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Lisa Diane Clevenger by William C. Gallagher, Esq., her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review denying cortisone and chiropractic treatment.

This appeal arises from two final orders of the Board of Review in which the Board affirmed two October 8, 2010, orders of the Workers' Compensation Office of Judges. In its Orders, the Office of Judges affirmed the claims administrator's orders dated April 22, 2010, and May 4, 2010, denying authorization for cortisone and chiropractic treatment. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, 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. Clevenger was working as an Emergency Room Technician for Ohio Valley Medical Center, Inc. when she fell into an elevator and was injured on August 25, 2009. The claim was held compensable. The claims administrator denied treatment with Dr. Michalski on April 22, 2010, and with Dr. Perzanowski on May 14, 2010. On May 7, 2010, Dr. Julius J. Heubner performed an independent medical examination and found Ms. Clevenger to have reached maximum medical improvement without any permanent disability. Ms. Clevenger resumed full duties as an Emergency Room Technician without any restrictions on June 2, 2010.

In reaching the decision to affirm the claims administrator's Order, the Office of Judges stated that the reports of Dr. Kovalick and Dr. Huebner were more probative and neither report comments upon the desirability or the necessity of claimant being referred for cortisone or chiropractic treatment. On appeal, Ms. Clevenger argues that previous cortisone shots from Dr. Michalski and prior chiropractic treatments from Dr. Perzanowski had relieved her pain and therefore should be held as reasonably required medical treatment. No medical documentation was received from either Dr. Michalski or Dr. Perzanowski. The Office of Judges found that the preponderance of the medical evidence failed to establish that referrals to Dr. Michalski and Dr. Perzanowski were reasonable or necessary. The Board of Review reached the same reasoned conclusion as the OoJ in its decision of May 14, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: March 8, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II