

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 5, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JACQUELINE SCARBERRY,
Claimant Below, Petitioner

vs.) No. 11-1179 (BOR Appeal No. 2045479)
(Claim No. 2010110110)

GENESIS HEALTHCARE CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jacqueline Scarberry, by Edwin H. Pancake, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Genesis Healthcare Corporation, by Gary Nickerson, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 18, 2011, in which the Board affirmed a December 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 10, 2010, decision denying an MRI of the left shoulder and cervical spine. 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. Scarberry was injured when she fell over a food cart while working at Genesis Healthcare Corporation. On June 10, 2010, the claims administrator denied Ms. Scarberry's request for an MRI of the left shoulder and the cervical spine in accordance with the Dr. Bailey's March 5, 2010, independent medical examination.

The Office of Judges affirmed the claims administrator's decision, and held that an MRI of the left shoulder and cervical spine is not reasonable and necessary medical treatment in this

claim. On appeal, Ms. Scarberry disagrees and asserts that the requested testing is required under West Virginia Code § 23-4-3(a)(1) (2005); she also asserts that Dr. Henry as her treating physician, is in the best position to know her treatment needs, and he feels the requested MRI is reasonable given the fact that she continues to report significant symptoms. Genesis Healthcare Corporation maintains that the Board of Review's Order is supported by a preponderance of the medical evidence. Dr. Bailey performed an independent medical evaluation and concluded that Ms. Scarberry has reached maximum medical improvement because the simple sprains, strains, and contusions sustained five months ago have long since resolved, and no further treatment or diagnostic studies would be expected to change her symptoms.

The Office of Judges concluded that Ms. Scarberry failed to submit any medical evidence to establish the requested treatment is reasonable and necessary as a result of the October 6, 2009, injury. It noted that the only evidence Ms. Scarberry submitted on appeal was her deposition testimony. It further noted that Dr. Bailey concluded that Ms. Scarberry has reached maximum medical improvement, and no further treatment or diagnostic studies are needed. The Office of Judges found that the report of Dr. Bailey constitutes the most detailed and thorough medical evidence of record. The Office of Judges concluded that an MRI of the left shoulder and the cervical spine are not reasonable and necessary medical treatment in this claim. The Board of Review reached the same reasoned conclusions in its decision of July 18, 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: June 5, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum