

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013

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

KATHY COPELAND,
Claimant Below, Petitioner

vs.) No. 11-1307 (BOR Appeal No. 2045640)
(Claim No. 2009095673)

PRINCETON MEMORIAL HOSPITAL,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Kathy Copeland, by Reginald D. Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Princeton Memorial Hospital, by Jeffrey B. Brannon, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 23, 2011, in which the Board affirmed a February 25, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 23, 2010, decision denying the addition of enthesopathy right gluteal and somatic dysfunction as compensable diagnoses of the claim. 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. Copeland was employed by Princeton Community Hospital as a licensed practical nurse on June 15, 2009, when she injured to her back, right hip, and right leg while trying to lift a patient off the floor. She was diagnosed with a right sacroiliac region sprain, right thoracic strain, right lumbar sprain, and right gluteal strain and the claims administrator found her injury compensable for those conditions on June 26, 2009. On August 20, 2010, her treating physician, Dr. Li, requested that the claims administrator add enthesopathy of the right gluteal and somatic dysfunction as compensable conditions of Mr. Copeland's claim. The claims administrator denied the request on September 23, 2010. The claims administrator's decision was affirmed by

the Office of Judges on February 25, 2011, and by the Board of Review on August 23, 2011, leading to this appeal.

The Office of Judges determined that enthesopathy and somatic dysfunction were not compensable conditions of Ms. Copeland's claim. The Office of Judges considered the request of Dr. Li and his rationale that enthesopathy and somatic dysfunction were more precise diagnoses of Ms. Copeland's condition. But the Office of Judges determined, based on the medical review of Dr. Smith that the diagnoses currently listed as part of the claim were sufficient to include all necessary treatment reasonably related to Ms. Copeland's June 15, 2009, injury. The Office of Judges was also persuaded by the evaluation of Dr. Surface, who believed that the additional diagnoses were not medically necessary to treat Ms. Copeland's condition. The Board of Review adopted the findings of the Office of Judges and affirmed its Order on August 23, 2011.

We agree with the conclusions of the Board of Review. Although West Virginia Code of State Rules § 85-20-6.6 (2006) authorizes the claimant's treating physician to request additional diagnoses, the request must be approved. The evidence of record does not support a finding that the requested conditions are causally related to the compensable injury or necessary to allow for treatment of the compensable injury. Enthesopathy and somatic dysfunction should not be added as compensable conditions of Ms. Copeland's claim.

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 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum