

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013

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

VICKI L. CLINE,
Claimant Below, Petitioner

vs.) No. 11-1310 (BOR Appeal No. 2045810)
(Claim No. 2004024188)

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

and

BLUEFIELD REGIONAL MEDICAL CENTER, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Vicki L. Cline, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jerad K. Horne, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 18, 2011, in which the Board affirmed a March 3, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 9, 2010, decision that Ms. Cline should be placed on a weaning and tapering program, and that cervical disc herniation should not be added as a compensable component 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. Cline was employed by Bluefield Regional Medical Center as a certified nursing assistant on November 17, 2003, when she injured her left knee and spine while trying to catch a patient who had fallen. She was initially diagnosed with cervical, dorsal, and lumbar strains and a left knee strain. X-rays of Ms. Cline's lumbosacral spine at the time of her injury revealed narrowing at the L4-5 disc space but no fracture of the lumbar spine. The claims administrator held her claim compensable for a left knee sprain, a left leg sprain, a sprain of the thoracic region, a sprain of the lumbar region, and a sprain of the neck. On June 11, 2004, Ms. Cline was seen by Dr. Kropac, who diagnosed the claimant with cervical disc herniation and began treating her with Celebrex, Ultram, and Robaxim. He later switched Ms. Cline's prescription for Celebrex with a prescription for Mobic, stating that these medications were necessary to treat Ms. Cline's condition. By October 28, 2004, Dr. Kropac prescribed Ultram, Robaxin, and Orudis for Ms. Cline and continued prescribing those medications up to April 26, 2010, when he last saw her.

On March 11, 2010, Dr. Waldren performed an independent medical evaluation of Ms. Cline in which he reported that it was difficult to account for the cervical disc herniation based on the reported mechanism of Ms. Cline's injury. Dr. Waldren believed that Ms. Cline's cervical disc herniation was not part of her compensable injury. He also found that additional treatment was inappropriate and not directly related to the compensable injury. Based on Dr. Waldren's report, on July 9, 2010, the claims administrator directed Dr. Kropac to place Ms. Cline on a weaning and tapering program and stated that cervical disc herniation was not part of Ms. Cline's November 17, 2003, injury. The Office of Judges affirmed the claims administrator's decision on March 3, 2011. The Board of Review affirmed the Order of the Office of Judges on August 18, 2011, leading to this appeal.

In its March 3, 2011, Order the Office of Judges determined that cervical disc herniation was not a compensable component of Ms. Cline's November 17, 2003, injury. The Office of Judges relied upon the report of Dr. Waldren and found it persuasive. The Office of Judges further found that, although Dr. Kropac had diagnosed Ms. Cline's herniated disc, he never causally related the condition to the November 17, 2003, injury. Since cervical disc herniation was not part of Ms. Cline's compensable injury, the Office of Judges determined that it was not reasonably necessary for Dr. Kropac to continue to prescribe Ultram, Robaxin, and Orudis. The Office of Judges determined that Ms. Cline had not presented enough evidence to establish her continued need for the medications and that she should therefore be placed on a weaning and tapering program.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order on August 18, 2011. We agree with the conclusions of the Board of Review. The medical evidence in the record demonstrates that cervical disc herniation is not a compensable component of Ms. Cline's November 17, 2003, injury. The medical evidence also does not establish that the prescriptions Ms. Cline received from Dr. Kropac were reasonably related to the claimant's condition.

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 Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II