

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

TIMOTHY G. HAUGHT,
Claimant Below, Petitioner

FILED
July 19, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-1548 (BOR Appeal No. 2045969)
(Claim No. 2006060809)

UNITED CONSTRUCTION COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Timothy G. Haught, by M. Jane Glauser, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. United Construction Company, Inc., by Lucinda Fluharty, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated October 13, 2011, in which the Board affirmed an April 26, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 22, 2010, decision denying a request for an MRI of the lumbar spine and authorization for the medication Percocet. 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.

Mr. Haught was injured while working for United Construction Company, Inc. on October 27, 2006. On November 22, 2010, the claims administrator denied a request for an MRI of the lumbar spine and authorization for the medication Percocet.

The Office of Judges affirmed the claims administrator's decision, and held that the preponderance of the evidence did not establish that the requested medical treatment was medically related and reasonably required for the treatment of the compensable injury. On appeal, Mr. Haught argues that because an aggravation of spondylolisthesis was held compensable, the MRI should be authorized. He further asserts that the medication Percocet

should be authorized because the record documents continued pain management. United Construction Company maintains that the MRI is unrelated to the compensable injury, and that the medication is outside the guidelines of West Virginia Code of State Rules § 85-20-53.14 (2006).

Under West Virginia Code of State Rules § 85-20-53.14, “Schedule II drugs should be prescribed on an outpatient basis for no longer than two weeks after initial injury or following a subsequent operative procedure.” The Office of Judges noted that the evidence did not demonstrate that Mr. Haught has complied with the narcotic prescription rules contained in West Virginia Code of State Rules § 85-20. It further noted that Dr. Guberman in his 2009 evaluation, indicated that Mr. Haught should be weaned and tapered off his narcotic medication. Further, the Office of Judges concluded that the preponderance of the evidence did not establish that the requested MRI of the lumbar spine was medically related to the compensable conditions in this claim. The Board of Review reached the same reasoned conclusions in its decision of October 13, 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: July 19, 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