

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

THOMAS D. FARLEY,
Claimant Below, Petitioner

FILED
December 20, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0427 (BOR Appeal No. 2046575)
(Claim No. 2002003973)

APPALACHIAN POWER COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Thomas D. Farley, by John H. Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Appalachian Power Company, by Lisa W. Hunter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 16, 2012, in which the Board affirmed an October 5, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 12, 2011, decision denying Mr. Farley's request for two lumbar facet injections. 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. Farley was employed as a line mechanic by Appalachian Power Company. He sustained an injury to his back while shoveling mud on May 25, 2001. Mr. Farley had a lumbar epidural steroid injection performed at Duke University Hospital on September 12, 2001. In March of 2009, Dr. Landis reported that Mr. Farley stated that some of the injections helped to relieve his pain but that the transforaminal epidural steroid injections did not help. Dr. Deer noted on May 2, 2011, a significant tenderness in Mr. Farley's right side L5-S1 and L4-5 with positive facet loading on the right side. Dr. Deer's impression was lumbar radiculopathy and lumbar sprain/strain. Dr. Deer requested authorization for facet joint injections for the lumbar spine. The claims administrator denied the request.

The Office of Judges affirmed the claims administrator's decision and held that Mr. Farley was not entitled to authorization for two lumbar facet injections. Dr. Landis stated that Mr. Farley's absence of radiculopathy indicated there was no need for the injections. The Office of Judges determined that Mr. Farley submitted no evidence that refuted the findings of Dr. Landis. It found that Dr. Deer did not establish that the requested treatment was for the compensable injury. Mr. Farley disagrees and asserts that the Office of Judges' decision is not supported by the reliable, probative, and substantial evidence. He further asserts that Dr. Deer's progress notes are proper medical evidence and that the requested medical treatment is reasonable and medically necessary to treat his pain. The Board of Review adopted the findings of the Office of Judges and affirmed its Order dated October 5, 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: December 20, 2013

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Brent D. Benjamin