

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JOSEPH G. GOUZD,
Claimant Below, Petitioner

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0624 (BOR Appeal No. 2046482)
(Claim No. 2009089686)

MYLAN PHARMACEUTICALS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Joseph G. Gouzd, by J. Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mylan Pharmaceuticals, Inc., by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 4, 2012, in which the Board affirmed a September 16, 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 Mr. Gouzd's request for cervical 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. Gouzd was employed as a fluid bed operator by Mylan Pharmaceuticals, Inc. when he fell on a slippery floor and hit his head on April 27, 2009. Mr. Gouzd's claim was held compensable for contusion of multiple sites. On May 5, 2010, Dr. Kim requested three cervical facet injections for Mr. Gouzd. The claims administrator denied the requested injections because the injections were requested to treat pre-existing conditions that are not compensable under this claim. The Office of Judges affirmed the claims administrator's decision and held that the requested injections were not necessary to treat the April 27, 2009, injury. Mr. Gouzd disagrees

and asserts that the preponderance of the evidence shows that additional cervical facet injections are medically reasonable and necessary.

The Office of Judges determined that Dr. Kim reported that the diagnoses requiring cervical injections were cervical degenerative disc disease and facet arthropathy, which are not compensable conditions in this claim. The Office of Judges noted that Dr. Martin in his independent medical examination found Mr. Gouzd to have reached maximum medical improvement with a 25% impairment. Dr. Martin attributed no impairment to the April 27, 2009, injury but stated that the impairment was completely due to pre-existing conditions. The Office of Judges found that Ms. Remick, ANP, indicated that the cervical facet injections were needed to treat cervical disc disease, herniated nucleus, and cervical osteoarthritis, which are pre-existing conditions and not related to the slip and fall that occurred on April 27, 2009.

Dr. Thaxton opined in a physician's review that the requested cervical facet injections were not related to the present claim, but due to pre-existing degenerative cervical disease. Mr. Gouzd had a pre-existing two level anterior cervical disc fusion. Dr. Thaxton noted that the request for the injections were for cervical intervertebral disc disease, cervical osteoarthritis, and cervical herniated disc, which are not covered conditions in this claim. The Office of Judges held that the preponderance of the evidence shows the requested injections were not reasonable or necessary treatment for the compensable injury of April 27, 2009. The Board of Review reached the same reasoned conclusions in its decision of May 4, 2012. 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: January 16, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, not participating