

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LARRY E. SHAMBLIN,
Claimant Below, Petitioner

FILED
January 14, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0736 (BOR Appeal No. 2046937)
(Claim No. 940041015)

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

and

CUMMINS CUMBERLAND, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Larry E. Shamblin, appearing pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jack M. Rife Jr., its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 18, 2012, in which the Board affirmed a January 30, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 23, 2011, decision denying Mr. Shamblin's request for Myobloc 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. Shamblin worked as a service administrator for Cummins Cumberland, Inc. when he was injured on March 8, 1994, from lifting a portable generator out of a box and putting it back

into a box. The claim was held compensable for cervical strain and other syndromes affecting cervical region/occipital neuralgia. Dr. Deer requested authorization for Myobloc injections several times and stated that the Myobloc injections were improving Mr. Shamblin's pain. Dr. Deer opined that Mr. Shamblin has cervical dystonia that he believes is related to Mr. Shamblin's work injury. Dr. Fahim, Dr. Memon, and Dr. Jin concluded that the Myobloc injections are not medically necessary to treat the compensable condition. The claims administrator denied Mr. Shamblin's request for Myobloc injections.

The Office of Judges affirmed the claims administrator's decision and held that the preponderance of the evidence does not establish that Mr. Shamblin's alleged cervical dystonia is causally connected to his work injury and that the requested Myobloc injections are not medically necessary or reasonable treatment for Mr. Shamblin's compensable injury. Mr. Shamblin disagrees and asserts that he has had pain in his neck and head since March 8, 1994, and that the Myobloc injections combined with the trigger point injections have made a significant difference in controlling his chronic neck and head pain. The West Virginia Office of Insurance Commissioner maintains that there is overwhelming medical evidence that demonstrates the Myobloc injections were requested to treat a condition unrelated to the occupational injury.

The Office of Judges determined that Dr. Deer's diagnosis of cervical dystonia is not persuasive and does not reflect that Mr. Shamblin's dystonia derived from his compensable injury. The Office of Judges found that Dr. Deer's analysis on the causal connection between Mr. Shamblin's dystonia and the compensable injury was vague. The Office of Judges placed significant weight upon the findings of Dr. Fahim, Dr. Memon, and Dr. Jin that concluded there was insufficient evidence to diagnosis Mr. Shamblin with dystonia. All three examiners stated that Botox injections are not recommended to treat chronic mechanical musculoskeletal pain but is the first line of treatment for dystonia. The Office of Judges concluded that without a causal connection being established between the diagnosis of cervical dystonia and the compensable injury it must be determined that the requested Myobloc injections of Botox is not medically related or reasonable treatment for Mr. Shamblin's compensable injury. The Office of Judges held that the preponderance of the evidence does not establish that Mr. Shamblin's alleged cervical dystonia is causally connected to his work-related injury and that the requested Myobloc injections are not medically necessary or reasonable in the treatment of Mr. Shamblin's compensable injury. The Board of Review reached the same reasoned conclusions in its decision of May 18, 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 14, 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