

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
March 18, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RICHARD A. CARPER,
Claimant Below, Petitioner

vs.) **No. 12-0940** (BOR Appeal No. 2046762)
(Claim No. 2002044959)

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

and

SYCAMORE CREEK INDUSTRIES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Richard A. Carper, by Steven Thorne, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 12, 2012, in which the Board affirmed a January 6, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 3, 2011, decision denying authorization for an office visit with David Caraway, M.D. 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. Carper was injured on January 21, 2002, when he hit a pothole in the course of his employment as a truck driver, and the claim was held compensable for cervical sprain/strain. Mr. Carper received pain management care from Dr. Caraway, who noted that Mr. Carper's cervical spine MRI revealed degenerative changes and herniated nucleus pulposi at C3-4, C4-5, and C6-7. He diagnosed Mr. Carper with a cervical sprain and brachial radiculitis, and treated him with Percocet, diclofenac, and Zanaflex, among other medications. On February 22, 2011, Jerry Scott, M.D., performed an independent medical evaluation and found that Mr. Carper's current treatment regimen appears generally directed at alleviating the symptoms associated with underlying degenerative changes. On August 3, 2011, the claims administrator denied a July 27, 2011, request for authorization of an office visit with Dr. Caraway on October 14, 2011.

In its Order affirming the August 3, 2011, claims administrator's decision, the Office of Judges held that Mr. Carper has failed to demonstrate that the requested office visit is medically related and reasonably required for the treatment of the compensable injury. Mr. Carper disputes this finding and asserts that the evidence of record demonstrates that the requested office visit is necessary for the treatment of his compensable injury.

The Office of Judges found that the request for authorization of an office visit with Dr. Caraway contains no reasoning indicating why the office visit is being requested or why it is necessary for the treatment of the compensable injury. The Office of Judges further found that a review of the evidentiary record indicates that the purpose of the requested office visit is continuation of the medications Percocet, diclofenac, and Zanaflex, which were prescribed by Dr. Caraway. Authorization for the medications Percocet, diclofenac, and Zanaflex has been previously denied, and said denial was affirmed by this Court in Case Number 12-0939. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision of July 12, 2012. We agree with the reasoning and conclusions adopted by 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: March 18, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II