

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**FILED**  
June 27, 2014  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**KELLIE M. WALKER,**  
**Claimant Below, Petitioner**

**vs.) No. 13-0344** (BOR Appeal No. 2047740)  
(Claim No. 2010138334)

**MONONGALIA COUNTY HEALTH DEPT.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Kellie M. Walker, by Robert L. Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Monongalia County Health Dept., by Gary W. Nickerson, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 7, 2013, in which the Board affirmed a September 18, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 22, 2012, decision which denied a request for authorization of an anterior cervical discectomy and fusion. 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.

Ms. Walker, a staff supervisor, was injured in the course of her employment on June 11, 2010, when she was in a motor vehicle accident. Her claim was held compensable for concussion, unspecified strain of the back, headache, and strain of the neck. Ms. Walker was treated for cervical sprain immediately following the accident and then participated in physical therapy for eight weeks. A treatment note by Todd Harshbarger, M.D., in February of 2011 indicates Ms. Walker's symptoms improved with physical therapy but then increased approximately four months later. She now experiences pain and decreased range of motion in her

cervical spine as well as intermittent tingling in her arms and hands. Dr. Harshbarger noted that an MRI revealed stenosis at C4-5 and C5-6 as well as degenerative disc disease contributing to central and bilateral foraminal stenosis. He assessed neck pain secondary to cervical stenosis and recommended a two level cervical discectomy with fusion.

On February 4, 2011, James Dauphin, M.D., performed a physician review in which he recommended denying the requested two level cervical discectomy with fusion. He found that an MRI revealed cervical spine stenosis and degenerative disc disease. It was noted that cervical herniated disc is not a compensable component of the claim. He opined that the surgery is unrelated to the compensable injury and is instead necessitated by the natural deterioration of organ and tissues, including degenerative disc disease.

Victoria Langa, M.D., performed an independent medical evaluation on June 6, 2011, and diagnosed status post cervical sprain/strain, underlying cervical disc disease, central disc/osteophyte complex at C4-5, small central disc protrusion at C5-6, intermittent headaches of uncertain etiology, and probable carpal tunnel syndrome. She determined that Ms. Walker's hand numbness is likely the result of non-compensable carpal tunnel syndrome. Dr. Langa stated that it is possible that the small central disc herniation at C5-6 is related to the motor vehicle accident; however, the protrusion is not causing any neural encroachment and there is no need for surgery to treat it at this time. It was found that the disc/osteophyte complex at C4-5 was pre-existing and therefore not compensable. Dr. Langa found it would be appropriate for Ms. Walker to receive further physical therapy and that cervical epidural steroid injections may be considered. Those injections were performed by Richard Vaglianti, M.D. The injections failed to alleviate Ms. Walker's symptoms so Dr. Vaglianti recommended surgery.

Dr. Dauphin performed a second physician review on March 19, 2012, and he again recommended denying the requested C4-5 surgery per West Virginia Code of State Rules § 85-20-21 (2006). He opined that the surgery was to treat pre-existing degenerative disease and the herniated disc is not a compensable component of the claim. He noted that there is no evidence that the C4-5 disc was aggravated by the compensable injury.

The claims administrator denied the request for an anterior cervical discectomy and fusion on May 22, 2012. The Office of Judges affirmed the claims administrator's decision in its September 18, 2012, Order. It found that Dr. Harshbarger requested the surgery for the diagnosis of herniated C4-5 disc. However, the Office of Judges determined that the only compensable cervical diagnosis in the instant claim is cervical strain. The requested treatment is not appropriate for a cervical strain pursuant to West Virginia Code of State Rules § 85-20-35.4 (2006). It was found that though the weight of the evidence indicates Ms. Walker does have a herniated C4-5 disc, that condition is not presently a compensable component of the claim and the requested surgery must therefore be denied.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its May 7, 2013, decision. We agree with the reasoning and conclusions of the Board of Review. The record indicates the requested surgery is neither reasonable nor necessary for the treatment of the compensable cervical sprain/strain.

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: June 27, 2014**

**CONCURRED IN BY:**

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

**DISSENTING:**

Justice Menis E. Ketchum