

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

ELIZABETH POTTER,
Claimant Below, Petitioner

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

vs.) No. 13-0371 (BOR Appeal No. 2047694)
(Claim No. 2011012734)

PINNACLE MINING COMPANY, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Elizabeth Potter, by Gregory Prudich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pinnacle Mining Co., by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 21, 2013, in which the Board affirmed, the September 21, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 27, 2012, decision denying a request for temporary total disability benefits from October 4, 2010, to July 14, 2011. 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 that the Board of Review's decision is clearly the result of erroneous conclusions of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion.

Ms. Potter was injured in the course of her employment when she fell in a mine. She alleged injuries to her left elbow, right hip, and lower back. The claims administrator held that the claim was not compensable. On review, the Office of Judges held the claim compensable for right hip contusion and left elbow strain. That decision was subsequently affirmed by the Board of Review. On review, this Court, in docket number 12-0650, reversed the Board of Review in part and held that the L5-S1 disc herniation was a compensable component of the claim. We

affirmed the Board of Review's determination that the right hip contusion and left elbow strain were compensable components of the claim.

Ms. Potter's request for temporary total disability benefits was denied by the claims administrator on March 27, 2012. The Office of Judges upheld that decision in its September 21, 2012, Order. It determined that Ms. Potter has a back condition that has not been held compensable in this claim. The record establishes that Ms. Potter was in two motor vehicle accidents prior to her work-related injury. An MRI taken on October 12, 2010, showed a disc herniation at L5-S1 barely touching the S1 nerve root. The Office of Judges found that an Administrative Law Judge determined in a previous decision that the claim was not compensable for the L5-S1 disc herniation, because her pain pre-existed her work-related injury. This was evidenced by a medical record from May 9, 2008, which indicated pain in the coccyx.

The Office of Judges held that a preponderance of the evidence indicates that Ms. Potter is not temporarily and totally disabled due to her compensable right hip contusion and left elbow strain. Dr. Prasadarao Mukkamala found in his independent medical evaluation that she had pre-existing back pain, and that her current complaints are related to her non-compensable L5-S1 herniated disc, not her compensable hip injury. The Office of Judges therefore concluded that Ms. Potter cannot return to work due to her non-compensable L5-S1 herniated disc. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges in its March 21, 2013, decision. Because this Court held that the herniated L5-S1 disc is a compensable component of the claim, we disagree with the reasoning and conclusions of the Board of Review.

The evidence of record clearly indicates that Ms. Potter was unable to work for a period of months due to her lower back injury. Her treating physician indicated in his deposition that she was unable to return to her employment due to her back and hip problems. Dr. Mukkamala also indicated in his independent medical evaluation that Ms. Potter would have trouble returning to her regular duties due to her back condition. Ms. Potter is clearly entitled to temporary total disability benefits due to her compensable L5-S1 disc herniation. Mr. Shorter testified in his deposition that Ms. Potter reached maximum medical improvement on the date that she received an L5-S1 transforaminal epidural injection. She received the injection on May 25, 2011. Therefore, Ms. Potter is entitled to temporary total disability benefits from October 4, 2010, to May 25, 2011.

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, the decision of the Board of Review is reversed and remanded with instructions to award the petitioner temporary total disability benefits from October 4, 2010, to May 25, 2011.

Reversed and Remanded.

ISSUED: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II

Justice Brent D. Benjamin, Not Participating