

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

BRAND SERVICES,
Employer Below, Petitioner

vs.) No. 17-0359 (BOR Appeal No. 2051550)
(Claim No. 2015033422)

RODNEY TRAVIS,
Claimant Below, Respondent

FILED
November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

The issue presented on appeal is the compensability of Mr. Travis's claim for workers' compensation benefits arising from a splenic rupture. The claims administrator rejected Mr. Travis's claim on June 11, 2015. On August 16, 2016, the Office of Judges reversed the claims administrator's decision and held the claim compensable. This appeal arises from the Board of Review's Final Order dated March 20, 2017, in which the Board affirmed the Order of the Workers' Compensation Office of Judges. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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, we affirm the decision of the Board of Review.

On May 31, 2015, Mr. Travis received treatment in the emergency department of Barnesville Hospital for severe abdominal pain in the left upper quadrant. Diagnostic imaging revealed the presence of a ruptured spleen and Michael Baum, M.D., performed an emergency splenectomy. A post-surgical examination of Mr. Travis's spleen revealed no abnormal pathology and the presence of a splenic laceration. The diagnosis was a ruptured spleen. During a follow-up examination, a Report of Injury was completed by Mr. Travis and Dr. Baum. In the Report, Mr. Travis indicated that on May 31, 2015, he sustained an injury to his spleen when he was punched in the back by a coworker. Dr. Baum listed Mr. Travis's diagnosis as a ruptured spleen resulting from an occupational injury. On June 11, 2015, the claims administrator rejected Mr. Travis's claim for workers' compensation benefits.

On September 14, 2015, Mr. Travis testified via deposition. Mr. Travis indicated that during his lunch break on May 31, 2015, a coworker "punched" him on the left side of the back following a comment made by Mr. Travis to the coworker. He testified that he felt immediate

pain following the incident and knew immediately that he was injured. Mr. Travis further testified that he never received any medical treatment regarding his spleen prior to May 31, 2015.

On December 3, 2015, A.K., Mr. Travis's coworker, testified via deposition.¹ A.K. identified himself as the coworker who struck Mr. Travis. However, he described the contact as a "jab" in the back following an insulting comment from Mr. Travis. A.K. indicated that at the time of the incident, he and Mr. Travis were seated with their backs facing one another. He then testified that immediately after the incident, Mr. Travis clutched his abdomen and stated that he was in pain. A.K. further testified that he did not hear Mr. Travis complain of abdominal pain prior to the incident.

Three of Mr. Travis's coworkers also testified via deposition on December 3, 2015, regarding Mr. Travis's physical condition prior to the incident. Billy Durig indicated that he witnessed Mr. Travis holding his abdomen on the morning of May 31, 2015. Mr. Durig further testified that Mr. Travis reported to him that he thought he pulled a muscle. James Phillips Jr. stated that he heard Mr. Travis report complaints of chest pain on the morning of May 31, 2015, which had been ongoing for the past year. Scott Rickrode testified that on the morning of May 31, 2015, Mr. Travis complained of lower abdominal pain and indicated that he believed he had pulled a muscle. Mr. Rickrode further testified that when he saw Mr. Travis again following their lunch break, Mr. Travis reported experiencing extreme pain.

Michael Mellott, Mr. Travis's coworker, also testified via deposition on December 3, 2015. He stated that Mr. Travis complained of stomach pain on the morning of the date of injury. Mr. Mellott then testified that he was the only witness to the incident involving Mr. Travis and A.K. He further testified that during the scheduled lunch break on May 31, 2015, Mr. Travis and A.K. were sitting with their backs to one another while A.K. was making a telephone call. He then stated that Mr. Travis made a joke about the substance of the telephone conversation, to which A.K. responded with a "slight jab" in the back. Mr. Mellott testified that Mr. Travis immediately stated "that hurt." He further stated that following lunch, he overheard Mr. Travis speaking over a two-way radio and that it was obvious from the tone of Mr. Travis's voice that his condition was rapidly deteriorating.

Finally, Dr. Baum testified via deposition on December 9, 2015. He testified that during the course of his treatment, Mr. Travis reported that he was injured when a coworker punched him in the back. Dr. Baum further testified that Mr. Travis did not report experiencing any prior problems or symptoms. He then testified that the injury to Mr. Travis's spleen was secondary to trauma and could not have been caused by a non-traumatic event because an examination of Mr. Travis's spleen revealed that it was of normal size with no evidence of disease present. Dr. Baum testified that Mr. Travis's description of being punched in the back is clearly the mechanism of injury which resulted in Mr. Travis's ruptured spleen.

¹ A. K. is identified by his initials due to the nature of his involvement in Mr. Travis's injury.

In its Order reversing the June 11, 2015, claims administrator's decision, the Office of Judges held the claim compensable.² The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated March 20, 2017. On appeal, Brand Services, by Michael Kawash, its attorney, asserts that Mr. Travis did not sustain a compensable injury because he was engaged in horseplay at the time of the injury. Alternatively, Brand Services asserts that Mr. Travis did not sustain a compensable injury because his ruptured spleen arose from non-compensable, pre-existing conditions. Mr. Travis, by William Gallagher, his attorney, asserts that the evidence of record clearly demonstrates that he suffered a ruptured spleen solely as the result of a punch from a coworker.

At the outset, the Office of Judges found that the incident which occurred on May 31, 2015, was not the result of horseplay. In reaching its conclusion that Mr. Travis sustained a compensable injury, the Office of Judges relied upon Dr. Baum's deposition testimony during which he stated that Mr. Travis's splenic rupture could not have been caused by a non-traumatic event. The Office of Judges then found that the record does not contain evidence indicating that Mr. Travis sustained any type of injury other than the jab or punch delivered by A.K. and, therefore, concluded that Mr. Travis sustained a compensable injury. We agree with the reasoning and conclusions of the Office of Judges, as affirmed 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: November 22, 2017

CONCURRED IN BY:

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

² The Office of Judges did not identify a compensable diagnosis or diagnoses.