

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**MURRAY AMERICAN ENERGY, INC.,
Employer Below, Petitioner**

vs.) No. 17-0374 (BOR Appeal No. 2051637)
(Claim No. 2016021531)

**RONALD PHILLIPS,
Claimant Below, Respondent**

FILED

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

MEMORANDUM DECISION

Petitioner Murray American Energy, Inc., by Aimee M. Stern and Denise D. Pentino, its attorneys, appeals the decision of the West Virginia Workers' Compensation Board of Review. Ronald Phillips, by Robert L. Stultz, his attorney, filed a timely response.

The issue on appeal is the compensability of the claim. The claims administrator rejected the claim on March 8, 2016. By its Order dated October 21, 2016, the Office of Judges reversed the claims administrator's decision and held the claim compensable for a thoracic strain. The Board of Review affirmed the Office of Judges' Order on March 20, 2017. 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.

Ronald Phillips, a motorman, alleges that he was injured in the course of and as a result of his employment on September 16, 2015. Mr. Phillips completed a report of injury indicating that he was driving a motor with three cars being pulled behind when one car went off the track. Mr. Phillips stopped his motor and had just stood up to check on the derailed car when his motor was struck from behind by another motorman. The force knocked Mr. Phillips down, causing him to strike his back and jerk his neck.

On September 17, 2015, Mr. Phillips presented to Preston Urgent Care with complaints of back pain in the lower and middle region on both sides and the right upper region. Mr. Phillips indicated that the pain was radiating down his left leg. Mr. Phillips underwent an x-ray of the thoracic spine which revealed multilevel thoracic spine degenerative changes without definite acute fracture or malalignment. He was diagnosed with an acute sprain/strain of the thoracic spine due to trauma.

Mr. Phillips's pain continued throughout the month of November of 2015 and he continued to seek treatment. His back pain was described as acute and sharp. On November 10, 2015, Mr. Phillips saw a physician at Preston Urgent Care who noted low back pain with mild right sciatica due to a recent injury, exacerbating chronic low back pain. An x-ray taken on November 11, 2015, revealed multilevel degenerative changes with scoliotic curvature.

Mr. Phillips has a significant history of back problems prior to the September 16, 2015, injury. In 2005, Mr. Phillips underwent a cervical spine MRI revealing C5-C6 mild spinal stenosis secondary to disc bulging and posterior osteophyte, as well as degenerative facet disease; narrowing of the left neural foramina at C6-7 secondary to a small left paracentral disc protrusion and a moderate size left osteophyte; and C6 and C7 vertebral body hemangiomas. Mr. Phillips also underwent a cervical and lumbar MRI on October 16, 2013, which revealed multilevel degenerative changes and loss of intervertebral disc space height most notable at the C5 and C7 levels. The lumbar MRI revealed multilevel degenerative changes with large broad-based disc bulges and herniations at multiple levels.

Mr. Phillips's pain persisted and on February 22, 2016, he once again presented to Preston Urgent Care. Mr. Phillips stated that he was suffering from back pain and constant neck pain. The notes indicated that the pain started around September 20, 2015. However, another section in the notes indicated that the back pain began on February 22, 2016. Mr. Phillips was diagnosed with unspecified dorsalgia, low back pain, and unspecified polyneuropathy. Mr. Phillips completed an application for benefits the same day and indicated that he injured himself on September 16, 2015, when his motor was struck from behind by another motorman and he fell, striking his back and jerking his neck. The physician's section was completed by Sharon Tichnell, PA-C, who indicated that she was first consulted regarding Mr. Phillips's back pain on September 17, 2015. Ms. Tichnell diagnosed low back pain and sciatica. The claims administrator denied the application for benefits on March 8, 2016. The Order stated that the medical records indicated that Mr. Phillips suffers from a degenerative condition and noted that Mr. Phillips alleged he was injured on September 16, 2015, but did not file an application until February 22, 2016.

On June 13, 2016, Mr. Phillips testified in a deposition that he was injured when he was struck from behind by a motorman. Mr. Phillips stated that he was knocked down, breaking the hand lever off with his back. He filled out a report of injury at the end of his shift and presented to a doctor the following day. At the time, his neck, mid-back, and lower back were hurting. Mr. Phillips continued working until February 22, 2016, when he could no longer take the pain. Mr. Phillips was examined by Preston Urgent Care and placed in physical therapy, which seemed to improve his leg pain but not his back pain. Mr. Phillips admitted that prior to the September 16,

2015, injury, he had back problems for which he sought treatment from various doctors. Mr. Phillips had back pain from the age of fourteen or fifteen, when he was working in the hayfields. While Mr. Phillips admitted prior back pain, he stated that he had always worked and passed his physicals.

By Order dated October 21, 2016, the Office of Judges reversed the claims administrator's decision rejecting the claim. The Office of Judges concluded that there was sufficient evidence to find that Mr. Phillips sustained a compensable injury on September 16, 2015, and held the claim compensable for a thoracic strain. The Office of Judges noted that while Mr. Phillips also complained of low back pain, the medical evidence of record was not sufficient to support a finding of a lumbar condition as there were inconsistent statements as to when his low back pain originally occurred. Therefore, the claim was held compensable solely for a thoracic sprain. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on March 20, 2017.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The evidentiary record shows that Mr. Phillips immediately reported his injury on September 16, 2015. Mr. Phillips presented to the doctor the next day and was diagnosed with a sprain to the thoracic region due to trauma. The medical evidence of record is sufficient to support a finding that Mr. Phillips sustained a compensable thoracic sprain on September 16, 2015.

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