

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**DAVID RADFORD,
Claimant Below, Petitioner**

September 13, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 18-0806 (BOR Appeal No. 2052603)
(Claim No. 2017027671)

**PANTHER CREEK MINING, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner David Radford, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Panther Creek Mining, LLC, by Sean Harter, its attorney, filed a timely response.

The issues on appeal are medical benefits and additional compensable conditions. The claims administrator denied the addition of neck pain, shoulder pain, and radiculopathy with numbness and burning in the arms and hands to the claim on June 20, 2017. On April 11, 2017, the claims administrator denied authorization of a neurosurgical referral. Finally, on May 3, 2017, it denied authorization of the medication Gabapentin. The Office of Judges affirmed the decisions in its February 21, 2018, Order. The Order was affirmed by the Board of Review on August 17, 2018.

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, 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. Radford, a shuttle car operator, was injured in the course of his employment on October 26, 2016. The Employees' and Physicians' Report of Injury completed that day indicates he was injured when he was caught on a cable, flipped into the air, and landed on his back. He reported injuries to his head and elbows. The physician's section was completed at Raleigh General Hospital and indicated diagnoses of scalp hematoma, scalp laceration, and possible concussion. The treatment note from Raleigh General Hospital that day indicates Mr. Radford had painless

cervical range of motion on examination. His upper and lower extremities were normal. A cervical x-ray showed a large lipoma on the left and facet arthropathy from C3 to C7. A brain CT scan was normal.

A few hours prior to the compensable injury, Mr. Radford was seen for a checkup with his regular physician, Chris Kincaid, M.D. He reported no pain. Dr. Kincaid's diagnoses were resolved flank pain, resolved arm injury, improved left wrist pain, and left arm pain. The following day, the Employer's Report of Occupational Injury was completed and indicates Mr. Radford sustained a laceration and contusion to the head when he was pulled off of his feet by a cable. An incident investigation report was also completed that day and indicates Mr. Radford sustained a laceration and contusion to his head. He was given first aid in the mine and sent to the surface for further evaluation.

Mr. Radford saw Dr. Kincaid on October 28, 2016, and reported pain in his head, neck, and upper back. Physical examination showed tenderness in the cervical spine. The upper extremities were found to be normal. Dr. Kincaid diagnosed concussion and recurring headaches. On November 1, 2016, Mr. Radford was seen for follow up and reported no pain. He had returned to work and stated that he had no numbness or tingling in his arms. Physical examination of the neck was normal. On November 30, 2016, Mr. Radford reported that he had returned to his normal work activities with no problem. Physical examination of his neck was normal. Dr. Kincaid found that Mr. Radford had healed from his compensable injury and required no further ongoing care. On March 1, 2017, Mr. Radford returned to Dr. Kincaid with complaints of a recent onset of pain in his lower arms as well as decreased dexterity and weakness in his hands. Mr. Radford also reported joint pain in his lateral epicondyles, wrists, and thumbs. An assessment of the neck was normal. Dr. Kincaid diagnosed numbness of the hand, lateral epicondylitis, and wrist joint pain. He ordered an EMG. On March 15, 2017, Mr. Radford was seen for pain in his arms, neck, and shoulders. He reported numbness, weakness, and tingling in his hands and arms. It was noted that he had recently hit his head on the roof of a cab at work. Dr. Kincaid diagnosed post-concussion syndrome, cervical radiculopathy, lateral epicondylitis, and neck pain.

The claim was held compensable for contusion and laceration to the head on November 10, 2016. On March 16, 2017, the claims administrator authorized a neurological referral and an EMG. The EMG was performed on March 28, 2017, and revealed moderate bilateral carpal tunnel syndrome. It showed no evidence of cervical radiculopathy. A cervical MRI was performed on March 29, 2017, and showed narrowing of the foramina at C3-4, C4-5, C5-6, and C6-7.

Mr. Radford returned to Dr. Kincaid on April 5, 2017, and again reported numbness and tingling in his arms as well as pain in his wrists, arms, and shoulders. His symptoms had not improved with medication. Dr. Kincaid recommended referral to a neurosurgeon. His diagnoses were wrist joint pain, lateral epicondylitis, traumatic and/or non-traumatic injury, cervical radiculopathy, and neck pain.

The claims administrator denied authorization of a neurosurgical referral on April 11, 2017. On May 3, 2017, it denied authorization of Gabapentin. Dr. Kincaid completed a diagnosis update on May 16, 2017, in which he requested that neck pain, shoulder pain, and cervical radiculopathy

with numbness and burning in the arms and hands be added to the claim. The request was based on Mr. Radford's complaints. It was noted that he had no objective limitations on physical examination.

In a May 16, 2017, letter, Dr. Kincaid stated that he had no evidence that Mr. Radford's current symptoms are the result of his compensable injury but he did not have these symptoms prior to the injury. He stated that if Mr. Radford is actually having the symptoms he describes, they are related to the compensable injury. The claims administrator denied the addition of neck pain, shoulder pain, and radiculopathy with numbness and burning in the arms and hands to the claim on June 20, 2017.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation on July 5, 2017, in which he found that physical examination of Mr. Radford's head, neck, and upper extremities were normal. Dr. Mukkamala opined that the compensable injury resulted in a contusion and scalp laceration. He found no credible, objective medical evidence to support Mr. Radford's reported symptoms of neck and shoulder pain. He also found no credible evidence of neurological defects to explain his reports of numbness and burning in his hands and arms. Dr. Mukkamala found no objective basis to causally relate Mr. Radford's upper extremity symptoms to the compensable injury. Dr. Mukkamala concluded that he had reached maximum medical improvement and required no further treatment.

On July 20, 2017, Mr. Radford testified in a deposition that three weeks after his compensable injury he developed pain in both hands and started having problems with dexterity. His symptoms worsened and he stopped working on March 14, 2017. Mr. Radford denied any prior injury to his head, neck, or shoulders. He also denied any additional injuries after the compensable one. Mr. Radford stated that he was seen by Dr. Kincaid for a regular checkup hours prior to his compensable injury on October 26, 2016, and received a clean bill of health. Mr. Radford testified that he was in a car accident in July of 2015, received some x-rays, and had no further treatment. In December of 2012, he sprained his left wrist.

On August 8, 2017, Mr. Radford applied for workers' compensation benefits for carpal tunnel syndrome. On September 7, 2017, Mr. Radford was evaluated by John Orphanos, M.D., for neck pain, bilateral arm pain, and numbness. Dr. Orphanos read the cervical MRI as showing multilevel degenerative disc disease, facet arthropathy, spurring causing narrowing from C4-C7, and neural foraminal narrowing at C3-4. He diagnosed cervical spondylosis with radiculopathy and bilateral carpal tunnel syndrome. On October 19, 2017, Mr. Radford reported no improvement after physical therapy. Dr. Orphanos noted triceps and wrist extension weakness which could be the result of a C7 radiculopathy.

On February 21, 2018, the Office of Judges affirmed the claims administrator's rejection of the addition of neck pain, shoulder pain, and radiculopathy with numbness and burning in the arms and hands to the claim as well as denials of a neurosurgical referral and the medication Gabapentin. In regard to the addition of cervical radiculopathy with numbness and burning in the arms and hands, the Office of Judges found that the evidence failed to show a causal connection between the compensable injury and radiculopathy. Mr. Radford was injured on October 26, 2016,

and did not report upper extremity symptoms until March of 2017. Further, the cervical MRI showed no evidence of a disc protrusion or herniation capable of causing radiculopathy. The Office of Judges found that the EMG showed bilateral carpal tunnel syndrome, which could explain Mr. Radford's upper extremity symptoms, and he has filed a claim for the condition. The Office of Judges further found that even if Mr. Radford has cervical radiculopathy, it is not causally connected to the compensable injury. Dr. Orphanos, a neurosurgeon, evaluated Mr. Radford and found that his cervical radiculopathy is the result of cervical spondylosis rather than a traumatic injury. His opinion is supported by an August 3, 2015, preinjury cervical x-ray which showed spondylosis. Lastly, the Office of Judges found that Dr. Kincaid, Mr. Radford's treating physician, stated that there was no evidence that his symptoms are related to the compensable injury. His request to add cervical radiculopathy to the claim was based on Mr. Radford's subjective complaints.

In regard to neck pain, the Office of Judges found that pain is a symptom, not a diagnosis. It determined that the only medical diagnosis of record relating to the neck is cervical radiculopathy, which has been determined to be unrelated to the compensable injury. Dr. Kincaid's treatment notes indicate no cervical diagnosis other than cervical radiculopathy. Examination of the cervical spine was consistently normal. Dr. Mukkamala also found in his independent medical evaluation that Mr. Radford sustained no cervical or neck injuries. The Office of Judges next determined that shoulder pain is also a symptom and not a diagnosis. It found that a preponderance of the evidence does not support a finding that Mr. Radford sustained a shoulder injury. He did not mention shoulder pain until March of 2017, four months after the compensable injury. Physical examination of the shoulders was always normal with no evidence of injury. The Office of Judges found no specific diagnosis of a shoulder condition in the medical record. Additionally, Dr. Mukkamala found no evidence of shoulder injury in his independent medical evaluation.

Regarding the requested medical treatment, the Office of Judges found that Dr. Kincaid requested a neurosurgical referral for Mr. Radford based on diagnoses of wrist joint pain, lateral epicondylitis, traumatic and/or non-traumatic injury, and cervical radiculopathy. None of these diagnoses have been found to be compensable conditions in the claim. Further, the Office of Judges found no medical evidence indicating that a neurosurgical referral is necessary for the compensable conditions of contusion and laceration of the head. Lastly, the Office of Judges concluded that the medication Gabapentin was to treat neuropathic symptoms. As the claim is not compensable for a neuropathic condition, the medicine was not necessary to treat the compensable injury. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on August 17, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The medical evidence indicates that Mr. Radford's cervical radiculopathy is not related to the compensable injury. An MRI showed no evidence of any traumatic injury or process that would cause cervical radiculopathy. Additionally, an EMG showed carpal tunnel syndrome, which could account for Mr. Radford's current symptoms. The conditions of neck and shoulder pain were also properly denied as they are symptoms and not diagnoses. As the claim is not compensable for any neuropathic conditions, the medication Gabapentin and a

referral to a neurosurgeon are not medically related or reasonable required treatment for the compensable injury.

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: September 13, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker

Justice Margaret L. Workman

Justice Tim Armstead

Justice Evan H. Jenkins

Justice John A. Hutchison