

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

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

**PAUL HARRISON,
Claimant Below, Petitioner**

vs.) No. 18-0939 (BOR Appeal No. 2052851)
(Claim No. 2016026275)

**CITY OF CHARLESTON,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Paul Harrison, by Counsel Patrick K. Maroney, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). City of Charleston, by Counsel James W. Heslep, filed a timely response.

The issue on appeal is permanent partial disability. The claims administrator granted no additional permanent partial disability award on September 23, 2016. The Office of Judges affirmed the decision in its April 5, 2018, Order. The Order was affirmed by the Board of Review on September 26, 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. Harrison, a firefighter, injured his lower back in the course of his employment on April 8, 2016, while moving a patient from a cot to a bed. The claim was held compensable for a lumbar sprain. Mr. Harrison has a long history of lumbar spine problems predating the compensable injury. A lumbar MRI taken on November 25, 2009, showed a disc herniation at L4-5, a small disc herniation at L5-S1, and degenerative changes from L4 to S1. A March 24, 2010, treatment note by Rida Mazagri, M.D., indicates Mr. Harrison had experienced constant back pain for the last seven months that radiated into the left hip and thigh. Dr. Mazagri diagnosed back pain and left leg pain, likely related to the degenerative disc disease seen on MRI at L4-5 and L5-S1. Physical therapy was recommended.

Mr. Harrison was treated by Melissa Gamponia, M.D., on December 21, 2010. She indicated he was treated for a work-related injury in which he twisted his back while carrying someone down icy stairs. He reported lumbar pain that radiated into the right hip and both legs. Dr. Gamponia diagnosed chronic-lower-back pain aggravated by the new injury. A January 4, 2011, lumbar MRI revealed a progression of the disc herniation at L4-5 since the previous MRI. There was also a mild herniation of L5-S1 and degenerative changes at L4-5 and L5-S1 with disc space narrowing. Mr. Harrison returned to Dr. Mazagri on February 16, 2011, and reported radiation into both legs and the right hip as well as right leg weakness and numbness. Dr. Mazagri recommended an L4-5 laminectomy and discectomy, which was performed by Robert Crow, M.D., on March 25, 2011. Dr. Crow's April 25, 2011, treatment note indicates the surgery improved, but did not completely eliminate, Mr. Harrison's back pain, and he still had some right-buttock pain and numbness in his toes.

Following the compensable injury in the instant claim, Mr. Harrison was treated at MedExpress. On April 12, 2016, he reported that he had chronic intermittent low-back pain with mild-right sciatica. He had a discectomy for a herniated disc five years prior. Mr. Harrison was diagnosed with a lumbar sprain. Mr. Harrison underwent a lumbar MRI which showed L4-5 and L5-S1 degenerative disc disease; multilevel facet arthropathy, most prominent at L4-5 and L5-S1; L4-5 protrusion with moderate foraminal stenosis and mild spinal canal stenosis; and L5-S1 osteophyte complex, mild facet hypertrophy, and foraminal stenosis. Mr. Harrison followed up with Dr. Crow on May 11, 2016. Dr. Crow noted that he could not tell from the MRI if the severe left foraminal stenosis was caused by a recurrent disc protrusion or scar tissue from the previous lumbar surgery, and he recommended a repeat MRI. On July 20, 2016, Dr. Crow opined that the MRI found scar/fibrous tissue with no obvious sign of a new surgical lesion.

Mr. Harrison returned to Dr. Crow on August 3, 2016, and Dr. Crow noted that Mr. Harrison was seen for worsening back and bilateral-leg pain and post-laminectomy syndrome. He had recently undergone injections at L4 and L5. He reported significant back pain, numbness in both legs, and problems with incontinence. Mr. Harrison had an antalgic gait. Dr. Crow stated that the most recent MRI showed no significant recurrent disc herniation. He stated Mr. Harrison was not a surgical candidate and prescribed pain management and physical therapy.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation on September 9, 2016, in which he noted the compensable condition of lumbar sprain. Dr. Mukkamala diagnosed lumbar sprain with history of L4-5 discectomy. He opined that Mr. Harrison needed no further treatment for the compensable injury. He found that the compensable injury was a soft tissue injury or lumbar sprain. Mr. Harrison's current symptoms were determined to likely be related to his underlying degenerative spondyloarthropathy. Dr. Mukkamala opined that he had received adequate treatment for the compensable sprain and there is no indication Mr. Harrison needs further treatment for the condition. Dr. Mukkamala stated that referral to the pain clinic was for the noncompensable degenerative condition only. Mr. Harrison was found to be at maximum medical improvement, and Dr. Mukkamala assessed 13% impairment. The claims administrator granted no additional permanent partial disability award on September 23, 2016.

Mr. Harrison was treated by Nicholas Bremer, M.D., on October 20, 2016. Dr. Bremer indicated Mr. Harrison was being treated for post-laminectomy syndrome and lumbar radiculopathy, for which he recommended lumbar spine injections and a spinal cord stimulator. Mr. Harrison answered interrogatories on January 26, 2017, in which he admitted to injuring his lumbar spine in a 1993 car accident. He also injured his back in 2011 and that injury required surgery and therapy. Mr. Harrison stated that he underwent physical therapy in 1993 and 2011.

Mr. Harrison testified in a deposition on March 9, 2017, that following his 2011 lumbar surgery, he returned to full-duty work. He asserted that the compensable injury caused different symptoms than he previously experienced, in that this injury caused pain in his left leg when it was previously in his right leg. Mr. Harrison stated that he retired due to low back and lower extremity symptoms. He testified that Dr. Crow refused to perform a second surgery because it was his opinion that the symptoms were the result of scar tissue and surgery would worsen it. Mr. Harrison also stated that he had experienced flair-ups due to everyday life since his 2011 back surgery.

On July 12, 2017, Bruce Guberman, M.D., performed an independent medical evaluation in which he diagnosed post-traumatic strain of the lumbar spine. He noted that Mr. Harrison had a prior lumbar discectomy in 2011 and that symptoms improved but did not completely resolve. Dr. Guberman found Mr. Harrison had reached maximum medical improvement and needed no further treatment.

The Office of Judges affirmed the claims administrator's decision granting no additional permanent partial disability award on April 5, 2018. It found that both Drs. Guberman and Mukkamala assessed 13% whole person impairment for the lumbar spine. The difference between the evaluations is that Dr. Guberman found an additional 2% impairment for a skin disorder related to Mr. Harrison's spinal cord implant. The Office of Judges determined that Dr. Bremer, of the Center for Pain Relief, treated Mr. Harrison on October 20, 2016, for post-laminectomy syndrome and lumbar radiculopathy. On that date, he recommended lumbar transforaminal injections as well as a spinal cord stimulator. The Office of Judges concluded that the spinal cord stimulator was therefore aimed at treating Mr. Harrison's post-laminectomy syndrome and radiculopathy, neither of which are compensable components of the claim. Therefore, a preponderance of the evidence indicated that Mr. Harrison is not entitled to an additional 2% permanent partial disability award for his skin disorder because it was caused by treatment that was not reasonably required to treat a compensable condition. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on September 26, 2018. After review, 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: 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