

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES
P.O. Box 2233, Charleston, WV 25328
Telephone (304) 558-0852**

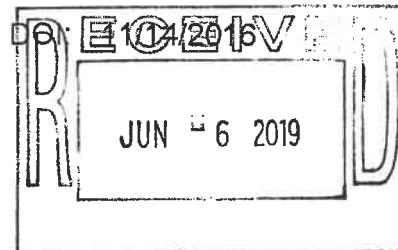
IN THE MATTER OF:

James Moore
Claimant

JCN: 2017012631

and

Arch Coal, Inc.,
Employer



DECISION OF ADMINISTRATIVE LAW JUDGE

PARTIES:

Claimant, James Moore, by counsel, Allan Karlin
Employer, Arch Coal, Inc., by counsel, Jeffrey Brannon

ISSUES:

1. The claimant protested the Claim Administrator's Order of September 15, 2017, which denied a request for trigger point injections and for referrals to a chiropractor, dietician, and massage therapy.
2. The claimant protested the Claim Administrator's Order of October 19, 2017, which closed the claim for temporary total disability benefits.
3. The claimant protested the Claim Administrator's Order of September 17, 2018, which denied a request to add C5-6 spondylosis with C6 radiculopathy as a compensable diagnosis in the claim.
4. The claimant protested the Claim Administrator's Order of September 17, 2018, which denied his request to reopen the claim for temporary total disability benefits.

DECISION:

It is hereby ORDERED that the Claim Administrator's Order of September 15, 2017, be MODIFIED as follows. The Order is REVERSED insofar as it denied trigger point injections and referrals to a chiropractor and massage therapist. The Order is AFFIRMED insofar as it denied referral to a dietician. It is further ORDERED that the requests for trigger point injections and chiropractic and massage therapy referrals be approved for payment in the claim.

It is hereby ORDERED that the Claims Administrator's Orders of October 19, 2017, and September 17, 2018, be AFFIRMED.

RECORD CONSIDERED:

See attached, **Record Considered**.

FINDINGS OF FACT:

1. The claimant filed a workers' compensation claim for injuries he sustained to his neck and shoulders on November 14, 2016. According to his application for benefits, the claimant struck his head on a canopy and jerked his right shoulder when the brakes on the shuttle car he was operating locked up. The physician's portion of the claim application indicated the claimant had sustained an occupational injury resulting in a right shoulder strain and upper back strain.

2. The claimant was evaluated at Med-Express on November 17, 2016, for complaints of neck and shoulder pain following a work-related injury on November 14, 2016. The claimant struck his head on a canopy and sustained a jerking type injury to his right upper arm and shoulder while operating a shuttle car at work. The claimant complained of pain in the right upper arm, right shoulder, and neck. The claimant was diagnosed with a sprain of the right shoulder and muscle spasm and prescribed medication. The claimant was released to modified duty work with no lifting or carrying over 10 pounds with the right arm. The claimant was to avoid pushing, pulling, reaching, and overhead reaching with the right arm.

3. The claimant was reevaluated at Med-Express on November 28, 2016, and December 5, 2016. The claimant continued to complain of neck and right shoulder pain. The claimant was working modified duty with restricted use of the right arm. The assessment was sprain of the right shoulder joint, neck pain, and right shoulder pain. MRI studies of the claimant's neck and right shoulder were ordered and the claimant was referred to physical therapy. The claimant was to continue under his prior work modifications with limited use of the right arm.

4. By Claim Administrator's Order dated November 28, 2016, the claimant was held compensable for right shoulder and upper back strain.

5. An MRI of the claimant's cervical spine was performed on December 3, 2016. Degenerative disc changes were found at C4-5 with a left posterior paracentral disc bulge or small herniated nucleus pulposus with equivocal ventral nerve root impingement. Osteophytes and a diffuse posterior disc bulge without definite nerve root impingement was noted at the C5-6 level.

6. The claimant was seen for an initial physical therapy evaluation on December 9, 2016. The claimant presented with complaints of right shoulder and neck pain following an injury at work. Recent MRI studies had revealed two bulging discs in the claimant's neck and a torn rotator cuff muscle in the right shoulder. The claimant was continuing to work with restrictions. The claimant complained of pain in the cervical area going down into the right periscapular area with a pinprick sensation in the right periscapular area. The claimant still had good movement but reported decreased strength and function. The claimant also reported intermittent numbness and tingling into the right hand and all 5 fingers. Based upon the claimant's symptoms, the physical therapist suspected cervical intervertebral disc disorder with right upper extremity radiculopathy and a right rotator cuff strain. The therapist recommended eight weeks of physical therapy, two to three times per week.

7. The claimant was examined and treated by Dr. ChuanFang Jin on January 5, 2017, for complaints of neck and right shoulder pain due to a work-related injury on November 14, 2016. The claimant was initially treated at Med-Express and placed on modified duty. The claimant reported daily neck pain that radiated to the right shoulder and right shoulder pain with tingling, numbness, and weakness in the fingers of the right hand. Imaging studies of the cervical spine revealed degenerative disc disease at C4-5 with a left posterior disc bulge. Dr. Jin opined that the claimant's work injury had exacerbated the claimant's cervical degenerative disc disease symptoms. She noted that the claimant also had imaging evidence of a partial right rotator cuff tear. Dr. Jin recommended physical therapy and a TENS unit. The claimant was to continue with modified duty work.

8. By Claim Administrator's Order dated January 9, 2017, neck pain was added as a compensable diagnosis in the claim.

9. The claimant was reevaluated at Med-Express on January 16, 2017. The claimant continued to report pain in the right shoulder and neck. Recent MRI studies revealed bulging cervical discs with equivocal nerve impingement and a partial thickness tear of the right rotator cuff. The claimant was diagnosed with cervical disc disorder and an "incomplete tear of the right rotator cuff or rupture of the right shoulder, not specified as traumatic." The claimant was

scheduled to see an orthopedist on January 26, 2017. The claimant was prescribed Tramadol.

10. The claimant was seen by Dr. Jin for follow-up on February 8, 2017. The claimant reported constant neck pain radiating into the right shoulder and arm. The claimant also complained of leg numbness but denied any lower back pain. Physical therapy was beneficial but had not resolved the claimant's symptoms. The claimant was taking Tramadol as needed. The claimant tried modified duty work but was recently taken off work by Med-Express following a diagnosis of pneumonia and a seven-day hospital stay. The claimant had not returned to work. Physical examination revealed significant tenderness in the cervical spine. There were no muscle spasms palpated or observed. Cervical range of motion was reduced. Neurological examination was non-focal. Dr. Jin diagnosed the claimant with a cervical sprain, cervical radicular pain, and neck pain. At the claimant's request, Dr. Jin referred the claimant to a doctor at the spine center for a second opinion. The claimant was to continue with physical therapy and modified duty work. Dr. Jin indicated that the claimant might not be able to work in an underground coal mine because of his multiple medical and health issues. The claimant was advised to consider a change in vocation if he wanted to continue working.

11. By Claim Administrator's Order dated February 23, 2017, the claimant's temporary total disability (TTD) benefits were suspended based upon the claimant's release to light duty work.

12. The claimant was seen by Dr. Jin for follow-up on March 6, 2017, and April 10, 2017. The claimant's neck pain had become more intense. He complained of constant neck pain radiating into the right shoulder and arm and intermittent numbness and tingling in the right arm and fingers. He reported a few episodes of neck pain radiating down the left arm. The claimant was having difficulty sleeping through the night. He was also working night shift which had exacerbated his sleep problems. The claimant reported dozing off while at work and while driving.

Dr. Jin had referred the claimant to a pain specialist to address his significant radicular complaints, and the pain specialist recommended epidural steroid injections. Dr. France had recently reviewed the claimant's imaging studies and opined that surgery was not indicated for the cervical spine. A recent IME evaluator had recommended right shoulder surgery. The claimant continued with physical therapy but reported very limited benefit.

Physical examination revealed decreased range of motion in the cervical spine. There was no evidence of muscle spasm in the cervical spine. Neurological examination was normal. Dr. Jin took the claimant off work to adjust his sleep cycle. Dr. Jin was concerned about the claimant's safety while driving. Tramadol was discontinued and the claimant was given a prescription

for Diclofenac and Elavil. The claimant was to complete physical therapy and follow-up with the pain clinic for injections. The claimant was advised to consider changing professions. Dr. Jin opined that the claimant might not be able to return to underground coal mining due to his neck problems.

13. The claimant followed-up with Dr. Jin on May 8, 2017. The claimant was scheduled to undergo shoulder surgery on May 10, 2017. The claimant reported slight improvement in his right arm pain following an injection. The claimant's neck pain remained the same. The claimant reported neck pain radiating to the right upper arm with numbness in the right arm. Physical examination of the claimant's neck revealed decreased range of motion. The claimant reported palpable tenderness in the lower cervical spine. There was mild discomfort in the posterior area of the right shoulder. Impingement examination of the right shoulder was unremarkable. Range of motion of the right shoulder was within normal limits. Neurological examination was normal. Dr. Jin recommended the claimant follow-up with Dr. Bal for his shoulder problems and with the pain clinic for his neck pain. The claimant indicated that he planned to apply for Social Security Disability benefits. Dr. Jin informed the claimant that she had nothing more to offer him from a medical treatment standpoint. The claimant was instructed to return as needed. Dr. Jin opined that the claimant was probably at maximum medical improvement (MMI) in regard to his cervical strain.

14. The claimant was evaluated and treated by Dr. Richard Vaglianti at the WVU Pain Center on April 3, 2017 and May 2, 2017 for complaints of chronic neck pain. Physical examination of the cervical spine revealed normal range of motion and no evidence of edema, tenderness, or deformity. Neurological examination was normal. Dr. Vaglianti diagnosed the claimant with cervical radicular pain, and the claimant was given a cervical epidural steroid injection.

15. The claimant returned to Dr. Vaglianti for treatment on June 20, 2017 and July 6, 2017. The claimant was given a cervical facet injection and right cervical medial branch blocks to treat his complaints of neck pain, tingling in the extremities, and cervical facet arthropathy on June 20, 2017. At his follow-up appointment on July 6, 2017, the claimant reported no relief following the medial branch blocks. The claimant continued to complain of constant neck pain with radiation down the right shoulder into the lateral arm with numbness and tingling in the first finger and thumb. The claimant had tried and failed physical therapy, TENS, NSAID's, acetaminophen and muscle relaxers. Physical examination revealed musculoskeletal tenderness in the bilateral trapezius muscles and facet tenderness at C5-6 and C6-7. Neurological examination of the upper extremities revealed no sensory or motor abnormalities. Dr. Vaglianti's assessment was right shoulder pain, neck pain, and myofascial muscle pain. He recommended trigger point injections, massage therapy and referrals to a chiropractor and dietician.

16. The claimant was seen by Dr. Jin for follow-up on September 12, 2017. The claimant had undergone right shoulder surgery and was participating in physical therapy. The claimant had not received any additional treatment for his neck other than an injection. The claimant continued to complain of constant neck pain with radiation to the right arm and right arm numbness. The claimant also reported occasional pain radiating to the left shoulder. Physical examination of the cervical spine revealed decreased range of motion. There was no palpable tenderness in the cervical spine. There was mild discomfort in the AC joint of the right shoulder. Impingement examination of the right shoulder was unremarkable and right shoulder range of motion was within normal limits. Neurological examination was normal. Dr. Jin diagnosed the claimant with a cervical strain, neck pain, and right rotator cuff tear. Dr. Jin prescribed Gabapentin. She found the claimant to be at MMI and opined that additional treatment was unlikely to change the claimant's condition. She opined that the claimant was unable to work as a coal miner. The claimant reported that he intended to apply for Social Security Disability Benefits.

17. By correspondence dated September 15, 2017, claimant's counsel requested that the claimant be evaluated for permanent partial disability.

18. By Claim Administrator's Order dated September 15, 2017, the claim administrator denied requests for trigger point injections, a referral to a chiropractor and dietician, and massage therapy. This claim is now before the Office of Judges pursuant to the claimant's protest to the Order of September 15, 2017.

19. The claimant was seen by Dr. Jin for follow-up on October 10, 2017. The claimant had completed physical therapy on his right shoulder. The claimant had received no additional treatment for his neck other than an injection. The claimant reported constant neck pain radiating to the right arm with occasional radiation of pain to the left shoulder. The claimant also continued to have numbness in his right arm. The claimant was taking Neurontin and Aleve. The claimant was recently evaluated by an independent evaluator who found the claimant to be at MMI. Physical examination of the claimant's neck revealed full range of motion of the cervical spine. There was no palpable tenderness in the neck. Neurological examination was normal. Dr. Jin found the claimant to be at MMI. She indicated the claimant was unable to work as a coal miner and was going to apply for Social Security Disability.

20. By Claim Administrator's Order dated October 19, 2017, the claim was closed for temporary total disability benefits. This claim is now before the Office of Judges pursuant to the claimant's protest to the Order of October 19, 2017.

21. By Claim Administrator's Order dated October 24, 2017, the claimant was granted a 1% permanent partial disability award based upon an IME report from Dr. Hennessey.

22. The claimant was seen by Dr. Jonathan Pratt of the WVU Pain Clinic on January 5, 2018. The claimant presented with complaints of neck and bilateral arm pain. The right side was worse than the left. The claimant reported 5% to 10% relief following a cervical epidural injection in May 2017. He reported no relief following cervical medial branch blocks in June 2017. Dr. Pratt noted the claimant had tried and failed conservative treatment consisting of physical therapy, traction, TENS, NSAID's, acetaminophen, gabapentin, and muscle relaxers. Dr. Pratt ordered trigger point injections for the claimant's complaints of myofascial pain in the traps, cervical paraspinals, and rhomboids. He also ordered an EMG to look for peripheral nerve entrapment.

23. The claimant returned to Dr. Vaglienti for treatment on January 17, 2018. The claimant was given trigger point injections with ultrasound. Dr. Vaglienti's procedure notes indicate the trigger point injections were administered for a pre-procedure diagnoses of right shoulder pain, neck pain, and myofascial muscle pain.

24. The record contains an MRI report of the claimant's cervical spine dated February 1, 2018. The impression was as follows: 1) reversal of expected lordotic curvature; 2) advanced uncovertebral osteoarthritis at C5-6 with spinal canal and foraminal narrowing; and 3) C4-5 disc herniation on the left.

25. The claimant was seen by Dr. Rizk Nashaat for treatment on February 6, 2018. The claimant reported 40% relief with trigger point injections on January 17, 2018. The claimant complained of constant bilateral cervical spine pain with radiation to the right arm, right thumb, and right first finger. He also complained of pain radiating from the cervical spine to the left medial arm and the last two fingers on the palm and dorsal side of the left hand. The claimant had tried and failed conservative treatment consisting of physical therapy, TENS unit, Acetaminophen, Gabapentin, and muscle relaxers. Neurological examination revealed no abnormalities. Dr. Nashaat recommended cervical epidural steroid injections, a referral to the spine center, and medication for treatment of the following diagnoses: neck pain, C6 radiculopathy, right arm pain, cervical spinal stenosis, facet arthropathy, cervical spondylosis with myelopathy and radiculopathy, and degenerative disc disease.

26. The record indicates that Dr. Vaglienti administered a C5-6 transforaminal epidural cervical/thoracic steroid injection to the claimant on February 15, 2018, for treatment of the following diagnoses: neck pain, degenerative disc disease of the cervical spine, cervical spondylosis with myelopathy and radiculopathy, facet arthropathy, cervical spinal stenosis, right arm pain, and C6 radiculopathy.

27. The record contains a letter from Dr. Vaglienti dated March 16, 2018. Dr. Vaglienti opined to a reasonable degree of medical certainty that the claimant's neck and arm pain was directly related to his compensable work injury on November 14, 2016. He further stated that it was highly likely that the herniated disc in the claimant's cervical spine was causally related to the compensable injury. He opined that his recommended treatment plan was reasonable and necessary for treatment of the compensable work injury. He also noted that the claimant was scheduled to see a spine surgeon to determine whether surgery would improve his symptoms. Dr. Vaglienti did not believe the claimant had reached MMI in regard to his compensable injury, and he did not believe it was safe for the claimant to return to coal mining.

28. The record contains an affidavit from the claimant dated March 19, 2018. The claimant stated that he is 49-years old and has worked as a coal miner for approximately 10 years. On November 14, 2016, the claimant sustained injuries while operating a shuttle car. The claimant was thrown upward and struck his head on a shuttle car canopy. Following the incident, the claimant developed chronic neck pain with radiation of pain down both arms. The claimant also injured his right upper arm and right shoulder as a result of the November 14, 2016 incident and was later diagnosed with a tear in his right bicep. The claimant's bicep was operated on by Dr. Bal. The claimant denied any problems with his neck, right arm, or right shoulder prior to the work incident of November 14, 2016. Following the November 14, 2016 injury, the claimant was initially treated at Med-Express with muscle relaxers. The claimant was placed on restricted duty and returned to work as a fire boss. The fire boss work was difficult and painful for the claimant to perform. The claimant came under the care of Dr. Chuanfang Jin. The claimant did not choose Dr. Jin as his doctor, and he was unsure how Dr. Jin became his doctor. Dr. Jin took the claimant off work and referred him to Dr. Richard Vaglienti at the Pain Center. The claimant continued to treat with Dr. Vaglienti. Dr. Vaglienti believed that the claimant's neck and right arm pain were caused by the work injury of November 14, 2016. Dr. Vaglienti also believed the herniated disc in the claimant's neck was likely caused by the work injury. The claimant was treated by Dr. Vaglienti with injections, and the injections seemed to reduce the claimant's neck and related pain. Workers' compensation had refused to cover Dr. Vaglienti's treatment requests, forcing the claimant to seek treatment with the Pain Center using his own health insurance and personal funds. Dr. Vaglienti believed the claimant was a candidate for cervical surgery and had not reached MMI. The claimant had no source of income after his temporary total disability benefits were cut off. The claimant requested that his TTD benefits be restored and paid back to the time they were cut off.

29. The record contains an affidavit from Nathan Moore dated March 19, 2018. Nathan Moore is the claimant's son. Nathan Moore accompanied his father to a second evaluation with Dr. Hennessey. Using his cell phone, Mr. Moore timed the claimant's second evaluation with Dr. Hennessey. Mr. Moore

stated that the claimant's second evaluation with Dr. Hennessey lasted five minutes.

30. The record contains an age of injury analysis of the claimant's cervical MRI from Dr. Jonathan Luchs dated April 18, 2018. Dr. Luchs noted that the claimant underwent a cervical MRI approximately 19 days after an injury. The primary reader of the MRI described the following findings: 1) C4-5 degenerative disc changes and a left posterior paracentral disc bulge and/or small herniated disc with equivocal ventral nerve impingement; 2) a C5/6 diffuse posterior disc bulge without definitive nerve root impingement; and 3) slight reversal of mid-cervical lordosis. After reviewing the MRI, Dr. Luchs agreed with the primary reader's findings of reversal of mid-cervical lordosis. He also concurred with the primary reader's findings of disc abnormalities at the C4-5 and C5-6 levels. Specifically, Dr. Luchs noted evidence of a disc osteophyte complex at C5-6 resulting in flattening of the ventral thecal sac. He also noted uncovertebral joint hypertrophy/arthropathy and facet arthropathy at C4-5 and C5-6 with degenerative disc disease at the C5-6 level resulting in neural foraminal narrowing. In conclusion, Dr. Luchs found that the MRI performed 19 days after the claimant's injury demonstrated degenerative disc disease and degenerative arthropathy. He opined that the findings were chronic in nature. He further noted that the reversal of mid-cervical lordosis correlated with the site of the degenerative changes.

31. The record contains a copy of Dr. Luchs' C.V. and an explanation of the double-blind method. These were reviewed and considered.

32. An x-ray of the claimant's cervical spine was performed on May 8, 2018. The x-ray revealed the following findings: 1) slight reversal of cervical lordosis at C3-4; 2) moderate degenerative disc disease and uncovertebral arthropathy at C5-6; 3) mild degenerative changes at C5-6; and 4) mild to moderate facet arthropathy throughout the cervical levels.

33. The claimant was evaluated by Dr. John France on May 8, 2018. The claimant presented with complaints of neck and shoulder pain. The pain started in the neck and radiated down between the shoulder blades and into the elbow and shoulder. The claimant reported occasional numbness in the right thumb and first finger. The claimant had tried injections, therapy, and medication for pain control. He reported 3 weeks of relief following a facet block, and 6 days of relief following a C6 nerve root block. He stated that his most serious problem was his shoulder pain. Physical examination revealed normal strength in the bilateral upper extremities. There was some decreased sensation in the thumb and index finger on the right side compared to the left. A recent x-ray of the cervical spine showed C5-6 spondylosis with mild right-sided C5-6 foraminal narrowing. There was no other significant pathology identified on the x-ray. Dr. France's assessment was right C6 radiculopathy with EMG findings of mild to moderate carpal tunnel syndrome (CTS). Dr. France recommended CTS

injections and a night splint. If the claimant experienced complete relief following the CTS treatments, then he would be referred to a hand specialist for further CTS treatment. If, on the other hand, the CTS treatments did not produce significant improvement, then the claimant's symptoms were most likely coming from the C5-6 nerve distribution. In that case, a discectomy and fusion would need to be considered.

34. The claimant was reevaluated by Dr. France on June 27, 2018. The claimant reported continued problems with paresthesias, especially in the right hand. Physical examination revealed normal strength in all major muscle groups of the bilateral upper extremities. Sensory examination of the bilateral extremities was normal as well, although the claimant did have a history of paresthesias in the right upper extremity. Dr. France's assessment was C6 radiculopathy. He recommended the claimant undergo surgery.

35. The record contains office notes from Dr. France dated August 9, 2018. The claimant was seen for post-surgical follow-up of a C5-6 anterior cervical discectomy and fusion performed on June 29, 2018. At the time of the August 9, 2018 visit, the claimant was approximately 6 weeks out from surgery. The claimant reported that he was doing outstanding. He expressed no concerns or complaints and reported full resolution of his upper extremity radicular symptoms. Dr. France noted the claimant was doing extremely well. The claimant's only restriction was to avoid any heavy lifting.

36. The record contains a diagnosis update request completed by Dr. France on August 21, 2018. Dr. France requested that C5-6 spondylosis with C6 radiculopathy and neck pain be added as compensable diagnoses in the claim. In support of his request, Dr. France referred to his office notes of May 8, 2018, and August 9, 2018.

37. The record contains a reopening application for TTD completed by the claimant on July 12, 2018, and by Dr. France on August 21, 2018. The claimant indicated that he had suffered an aggravation and/or progression of his compensable injury. Dr. France indicated that the claimant was unable to work due to the diagnoses of C5-6 spondylosis with radiculopathy and neck pain. Dr. France stated that the claimant would be off for 4 to 6 months for neck surgery. He further stated that the claimant's disability would continue until approximately three months after surgery. Dr. France certified the claimant as temporarily and totally disabled from June 29, 2018, through September 30, 2018.

38. By Claim Administrator's Order dated September 17, 2018, the claim administrator denied a request from the claimant to reopen his claim for temporary total disability (TTD) benefits. The denial was based upon a finding that the claimant's ongoing disability was unrelated to the compensable injury of November 14, 2016. This claim is now before the Office of Judges pursuant to the claimant's protest to the Order of September 17, 2018.

39. By separate Claim Administrator's Order September 17, 2018, the claim administrator denied Dr. France's request to add C5-6 spondylosis with C6 radiculopathy as a compensable diagnosis in the claim. This claim is now before the Office of Judges pursuant to the claimant's protest to the Order of September 17, 2018.

40. By Decision dated September 26, 2018, the Office of Judges affirmed the Claim Administrator's Order of December 7, 2017, which denied further evaluation with Dr. Vaglianti. The Administrative Law Judge concluded that the evidentiary record indicated that the request was related to the treatment of non-compensable conditions.

41. The record contains a copy of Dr. France's C.V. This was reviewed and considered.

42. The record contains a copy of Dr. Vaglianti's C.V. This was reviewed and considered.

43. Dr. Bruce Guberman performed an independent medical evaluation of the claimant on November 6, 2018. The claimant was a middle-aged man who suffered injuries to his right shoulder and cervical spine on November 14, 2016 when he was thrown into a shuttle car canopy at work. The claimant injured his neck when he struck his head on the canopy. The claimant denied any pain, prior injuries, or loss of motion in the cervical spine prior to the work injury of November 14, 2016. An EMG/nerve conduction study of the claimant's upper extremities was performed on January 30, 2018. The EMG/NCS revealed bilateral CTS but no definitive evidence of cervical radiculopathy. The claimant's cervical symptoms failed to respond to conservative treatment, and on June 29, 2018, the claimant underwent an anterior cervical discectomy and fusion at the C5-6 level. The claimant reported that his neck symptoms significantly improved following surgery. At the time of Dr. Guberman's evaluation, the claimant complained of sharp low back pain radiating into the shoulder blades and both arms. The claimant also reported numbness, tingling, and weakness in both hands. The claimant stopped working on November 7, 2016 and returned to work approximately two days later. The claimant continued working intermittently until he was taken off work in April 2017. The claimant did not return to work until September 2018 when he began working part-time as a tractor-trailer driver. The claimant was only able drive for eight hours and tried not to work two days in a row. Physical examination of the upper extremities by Dr. Guberman revealed no evidence of muscle weakness and normal sensation to light touch. Dr. Guberman diagnosed the claimant with chronic posttraumatic strain of the cervical spine with C6 radiculopathy. Dr. Guberman further opined that the claimant's cervical radicular symptoms and cervical surgery were directly related to the compensable injury of November 14, 2016. In support of that opinion, Dr. Guberman offered the following findings and conclusions:

He [the claimant] was also evaluated by Dr. France for his cervical spine and was felt to have C6 radiculopathy and underwent anterior cervical discectomy and fusion at that level. Symptoms have significantly improved, confirming that his cervical spine symptoms and radicular symptoms were primarily related to the C5-6 disc and the radiculopathy. Although there were degenerative changes present on imaging studies of the cervical spine, which at least in part were likely present before the current injury, as far as can be determined based on records and the claimant's history, there were no prior injuries in regard to the cervical spine. In addition, there was no evidence of any prior symptoms, abnormalities, radicular symptoms, or abnormalities on physical examination of the cervical spine until the current injury. Therefore, if the claimant did have degenerative changes of the cervical spine before the current injury, they were dormant and were not symptomatic nor impairing until the injury of November 14, 2016. Therefore, in my opinion, to a reasonable degree of medical certainty, the surgery for anterior cervical discectomy and fusion was reasonable and necessary directly as a result of the injury of November 14, 2016. In addition, the radiculopathy diagnosed by Dr. France was causally related to the injury of November 14, 2016, so there is no evidence the claimant would have had radiculopathy at the current time nor at any time in the future if it were not for the injury of November 14, 2016. Likewise, there is no evidence he would have required anterior cervical discectomy and fusion at the present time nor at any time in the future if it were not for the injury of November 14, 2016.

Dr. Guberman found the claimant to be at MMI and to have a 25% whole person impairment of the cervical spine as a result of the compensable injury of November 14, 2016.

44. The record contains a copy of Dr. Guberman's C.V. This was reviewed and considered.

45. The claimant submitted a proof of service for a subpoena/subpoena duces tecum on Kathy Pitman dated December 20, 2018.

46. The claimant submitted an amended notice to take the deposition of Dr. Chuanfang Jin dated January 3, 2019.

47. The claimant submitted an amended notice duces tecum to take the deposition of Kathy Pitman dated January 8, 2019.

48. The deposition of Dr. Jin was taken on January 9, 2019. Dr. Jin testified that she first treated the claimant on January 5, 2017, for a work-related

injury sustained on November 14, 2016. The claimant reported complaints of neck pain, right shoulder pain, and cervical radicular pain, primarily into the right arm. To Dr. Jin's knowledge, the claimant had no history of cervical or upper extremity radicular pain prior to the injury of November 14, 2016. Dr. Jin testified that an MRI of the claimant's cervical spine performed after the injury showed evidence of pre-existing cervical disc disease and no evidence of acute pathology. She noted that while a traumatic injury typically causes true disc herniation, a disc bulge is usually due to the chronic mechanical process of the disc's holding material wearing out. In Dr. Jin's opinion, the C5-6 disc bulge seen on the claimant's MRI study was of a degenerative rather than traumatic origin. Considering the claimant's age (50-years old) and occupation (coal miner), Dr. Jin noted that it was not unusual to see evidence of cervical disc disease. She opined that the claimant had sustained a cervical sprain/strain injury as a result of the compensable event of November 14, 2016. She stated that while the claimant may have developed new symptoms following the compensable injury, the imaging evidence established that the compensable injury did not produce any new cervical pathology. She explained that once degenerative changes progress to a certain point, certain things, like minor incidents, can trigger the manifestation of significant symptoms. She stated that when a sprain/strain injury is superimposed on pre-existing disc degeneration, many patients develop radicular pain and sometimes even radiculopathy. In regard to the claimant's situation, Dr. Jin stated that while the compensable injury did not actually cause the claimant's radicular symptoms, it likely triggered symptoms related to his underlying pre-existing degenerative disc disease. She further noted that degenerative changes are the most common cause of radiculopathy in the general population. Dr. Jin noted that she found the claimant's compensable cervical sprain/strain to be at MMI on May 8, 2017, September 12, 2017, and October 10, 2017.

49. The record contains a medical opinion from Dr. Vaglianti dated February 14, 2019. Dr. Vaglianti opined:

Mr. James A. Moore was injured in a coal mine accident on November 14, 2016. In this accident a car he was driving was abruptly stopped. This abrupt stop caused his head to be jammed into the roof of the vehicle leading to a Right C6 Cervical Radiculopathy and his right arm to be stressed in such a way that tore his Rotator Cuff and biceps tendon. Mr. Moore reports in his affidavit that he did not have neck or arm pain prior to this injury, this is confirmed by Dr. Jin's best recollection in her deposition. He was evaluated by me, Dr. Vaglianti, on April 3rd, 2017; with my impression being Cervical Radiculopathy. He went along through a course of treatment for the Cervical Radiculopathy which was confirmed with good relief from a Cervical Nerve Root Injection.

Mr. Moore was evaluated by Dr. France on May 8, 2018 for the diagnosis, again, of Cervical Radiculopathy was entertained and surgery was offered. He subsequently had surgery for Cervical Radiculopathy with excellent results. Mr. Moore had Degenerative Disease of his neck, which was asymptomatic until the new injury occurred on November 14th, 2016. Had this injury never occurred it is possible that the Radiculopathy would never have occurred.

Therefore, without the MRI ordered as a result of the work-related injury, no evidence of this Degenerative Disease would be available. Given the force of the injury and the reported minimal findings of the MRI, it is probable that this Radiculopathy would have occurred even in the absence of Cervical Degenerative Disc Disease. The compressive force of the injury, along with the position of the head, and neck (which is unknown) would have been sufficient to cause the injury. The above opinions are stated to a reasonable degree of medical certainty.

50. Claimant's counsel submitted closing arguments/responses dated March 7, 2019, March 21, 2019, March 29, 2019 and April 6, 2019. Counsel argues that the opinions of Drs. France, Vaglianti, and Guberman support the conclusion that the claimant's cervical pain with radiculopathy is a compensable condition in the claim. Counsel further argues that the claimant's radiculopathy is a compensable condition according to controlling case law¹, because the weight of the evidence establishes that the compensable injury aggravated the claimant's pre-existing degenerative disease so as to produce a discrete new injury (radiculopathy). In support of that argument, counsel asserts that the record shows the claimant had no symptoms of cervical pain or cervical radiculopathy prior to the compensable injury. Counsel argues that even if the claimant's pre-existing degenerative disease was a factor in the development of the cervical radiculopathy, he is nonetheless entitled to compensation for the radiculopathy diagnosis because the compensable work injury aggravated and/or accelerated the pre-existing condition to the extent of causing a disability sooner than would have otherwise occurred.

Regarding the Order of September 17, 2018, which denied a reopening of the claim for TTD, counsel argues that the reopening application was based upon the claimant's need for a period of post-operative recovery following his cervical fusion. Counsel asserts that since the surgery was necessary to address the compensable condition of cervical radiculopathy, the claimant was entitled to a reopening of the claim. Counsel further notes that the IME opinion relied upon by the claim administrator to deny the reopening request is not of record.

¹ Claimant's counsel cites the following cases: *City of Charleston v. Gill*, 236 W.Va. 737 (2016); *Charlton v. State Workmen's Compensation Comm'r*, 160 W.Va. 664 (1977); *Manning v. State Compensation Commissioner*, 124 W.Va. 620 (1942); *Cochran v. W.Va. United Health Sys.*, 2018 W.Va. Lexis 317 (2018) (Memorandum Decision).

Regarding the Order of October 19, 2017, which terminated the claimant's TTD benefits, counsel argues that the claimant was found to be at MMI because his cervical pain and radiculopathy were not considered as compensable conditions. Counsel asserts that since the claimant's cervical pain and radiculopathy are compensable conditions, the claimant should be granted retroactive TTD benefits from the date they were terminated to the date he was found at MMI by Dr. France.

Regarding the Order of September 15, 2017, denying additional treatment, counsel argues that the denial was premised on the belief that the claim was only compensable for muscle strain. Counsel notes that the trigger point injections were recommended by Dr. Vaglianti to reduce the claimant's pain. Counsel further argues the employer has not submitted any evidence to rebut the findings and opinions of Dr. Vaglianti. Counsel asks that the Order of September 15, 2017 be overturned, and the requested treatment authorized.

51. Employer's counsel submitted closing arguments dated March 7, 2019, March 18, 2019 and March 29, 2018. Counsel argues that Dr. France's diagnosis update essentially asks that the pre-existing condition of spondylosis be added as a compensable condition. Counsel argues that there is no medical opinion of record indicating that spondylosis is anything other than a degenerative condition. Counsel further notes that Dr. Jin diagnosed the claimant with radicular symptoms but not radiculopathy.

Regarding the Order of September 17, 2018, denying a reopening of the claim for TTD, counsel argues that the claimant's inability to work was due to non-compensable degenerative spondylosis rather than the compensable injury.

Regarding the Order of September 15, 2017, which denied treatment, counsel argues that there is no evidence that the requested treatment was either medically necessary or reasonably required to treat a compensable condition. Counsel notes that the claimant's pre-existing degenerative condition cannot be the basis for the authorization of medical treatment. Counsel further notes that Dr. Jin found the claimant at MMI and in need of no further medical treatment on May 8, 2017, September 12, 2017, and October 10, 2017. Finally, counsel notes that it is not clear from the record who even requested the treatment at issue.

Regarding the Order of September October 19, 2017, which terminated TTD, counsel argues that the Dr. Jin, the claimant's treating physician, placed him at MMI on May 8, 2017, September 12, 2017, and October 10, 2017. Counsel further asserts that the claimant has failed to produce any evidence that he was disabled due to a compensable condition in the claim.

DISCUSSION:

W. Va. Code § 23-4-1g provides that, for all awards made on or after July 1, 2003, the resolution of any issue shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined merely by counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

I. Secondary Conditions

This claim is before the Office of Judges on the claimant's protest to the Order of September 17, 2018, which denied Dr. France's request to add C5-6 spondylosis with radiculopathy (M47.22) and neck pain (M54.2) as compensable conditions in the claim. The issue is whether the medical condition complained of by the claimant is causally related to the compensable injury or from the events which caused the compensable injury. The criteria to prove this issue is the same as that used to prove that a compensable injury occurred. West Virginia Code §23-4-1 provides for benefits to employees who receive an injury in the course of and as a result of their covered employment. Three elements must coexist in compensability cases: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. *Barnett v. State Workmen's Compensation Commissioner*, 153 W.Va. 796, 172 S.E. 2d 698 (1970); *Jordan v. State Workmen's Compensation Commissioner*, 156 W.Va. 159, 191 S.E. 2d 497 (1972).

The Order of September 17, 2018, denied two requested diagnoses: C5-6 spondylosis with C6 radiculopathy and neck pain. According to the Claim Administrator's Order, the requests were denied because an IME had indicated

that the claimant's cervical condition was not a result of the work-related injury. The record shows that by Claim Administrator's Order dated January 9, 2017, neck pain was added as a compensable diagnosis in this claim. Therefore, according to the law of the case, neck pain is already a compensable diagnosis in this claim and should not have been denied by the claim administrator as unrelated to the compensable injury. Accordingly, the Order of September 17, 2018, must be reversed insofar as it denied neck pain as a compensable diagnosis.

The other diagnosis request addressed by the Order is C5-6 spondylosis with C6 radiculopathy. According to Dorland's Illustrated Medical Dictionary (29th ed.), spondylosis is defined as a "general term for degenerative spinal changes due to osteoarthritis." More specifically, Dorland's defines cervical spondylosis as a "degenerative joint disease affecting the cervical vertebrae, intervertebral discs, and surrounding ligaments and connective tissue, sometimes with pain or paresthesia radiating down the arms as a result of pressure on the nerve roots." These definitions are consistent with the sworn testimony of Dr. Jin, who described spondylosis as a "fancy name for degeneration." Therefore, cervical spondylosis refers to a degenerative condition as opposed to a traumatic injury diagnosis. Moreover, the weight of evidence firmly establishes that the claimant's degenerative condition or spondylosis predated the compensable injury and was not caused by the incident of November 14, 2016. In that regard, an MRI of the claimant's cervical spine taken only a few weeks after the compensable injury demonstrated degenerative changes at the C4-5 and C5-6 levels of the cervical spine, while a subsequent MRI study performed on February 1, 2018, showed "advanced uncovertebral osteoarthritis at C5-6." In addition, Dr. Jin, Dr. Luchs, Dr. Guberman, and Dr. Vaglianti have all acknowledged that the claimant's cervical osteoarthritis or degenerative disease predated the compensable injury in this claim. Accordingly, it is found that the requested diagnosis of C5-6 spondylosis is not causally related to the compensable injury of November 14, 2016.

In support of his protest to the Claim Administrator's Order, claimant's counsel argues that according to established case law², radiculopathy should be added as a compensable diagnosis in this claim. Specifically, counsel asserts that the compensable injury aggravated the claimant's pre-existing degenerative disc disease (spondylosis) so as to produce a discrete new diagnosis of radiculopathy. What distinguishes this case from the other cases cited by claimant's counsel, however, is that the requested diagnosis in this claim is "C5-6 spondylosis *with C6 radiculopathy*." [Emphasis added]. Dr. France did not request a stand-alone diagnosis of cervical radiculopathy; rather, he requested a diagnosis of spondylosis with associated radiculopathy. According to the ICD-10

² Claimant's counsel cites the following cases: *City of Charleston v. Gill*, 236 W.Va. 737 (2016); *Charlton v. State Workmen's Compensation Comm'r*, 160 W.Va. 664 (1977); *Manning v. State Compensation Commissioner*, 124 W.Va. 620 (1942); *Cochran v. W. Va. United Health Sys.*, 2018 W.Va. Lexis 317 (2018) (Memorandum Decision).

medical coding reference, the diagnosis code of M47.22 (spondylosis with radiculopathy) is a subset of the primary diagnosis of spondylosis. In other words, according to the diagnosis used by Dr. France in this claim, the claimant's radiculopathy is a finding or symptom arising from the primary diagnosis of spondylosis. As fully explained above, spondylosis is not a traumatic injury diagnosis; it is a general term used to describe degenerative findings related to osteoarthritis. Accordingly, it necessarily follows that any findings, diagnoses, or symptoms arising as a result of spondylosis, such as radiculopathy, would likewise be non-compensable.

Claimant's counsel argues that the claimant had no symptoms of cervical pain or radiculopathy prior to the compensable injury in this claim. While this may be true, the argument does not support the addition of C5-6 spondylosis with C6 radiculopathy as a compensable condition in the claim. As noted above, the requested diagnosis in this claim is cervical spondylosis, and the record does not indicate that the claimant's degenerative disease was causally related to the compensable injury in the claim. Additionally, Dr. Jin testified that once degenerative changes progress to a certain point, minor incidents, like a soft tissue injury, can trigger the manifestation of significant symptoms due to the aggravation of the underlying degenerative disease. She explained that while the claimant may have developed new symptoms following the injury, the objective imaging evidence established that the injury did not produce any new cervical pathology to cause radiculopathy. In other words, the objective medical evidence of record establishes that the compensable event did not result in discrete new cervical injury capable of producing cervical radiculopathy.

In addition to the foregoing, the record raises significant questions regarding the very diagnosis of radiculopathy in this claim. Although the record is replete with medical documentation of the claimant's subjective complaints of upper extremity radicular pain, the objective medical evidence of record does not support a diagnosis of true radiculopathy. An MRI of the claimant's cervical spine performed only a few weeks after the compensable injury revealed osteophytes and a diffuse bulge at C5-6 without definite nerve root impingement at the C5-6 level. Thereafter, Dr. Luchs performed a review and assessment of the cervical MRI. Dr. Luchs also found that the MRI showed no evidence of nerve root impingement. More importantly, Dr. Guberman notes in his IME report of November 6, 2018, that an EMG/NCS of the claimant's bilateral upper extremities performed on January 30, 2018, showed evidence of bilateral CTS with no definitive evidence of cervical radiculopathy. In that regard, it is noted that the record contains no objective imaging or electrodiagnostic evidence to support a diagnosis of true radiculopathy in this claim.

Similarly, the objective clinical findings of the various evaluators and medical providers of record do not support a diagnosis of radiculopathy. The record shows that Dr. Jin performed physical examinations of the claimant on February 8, 2017, March 6, 2017, April 10, 2017, May 8, 2017, September 12,

2017, and October 10, 2017. On each occasion, Dr. Jin's neurological examination of the claimant's upper extremities revealed no motor or sensory abnormalities consistent with a true radiculopathy. The record shows that Dr. Vaglianti examined the claimant on April 3, 2017 and May 2, 2017. Like Dr. Jin, Dr. Vaglianti's neurological examination of the claimant's upper extremities revealed no abnormalities consistent with cervical radiculopathy. On June 27, 2018, the claimant was examined by Dr. France. Like Drs. Jin and Vaglianti before him, Dr. France's neurological examination of the claimant's upper extremities revealed no sensory or motor abnormalities consistent with true radiculopathy. Dr. France further noted that the claimant's imaging studies revealed C5-6 spondylosis with mild foraminal narrowing and no other significant pathology. Finally, Dr. Guberman performed an examination of the claimant on November 6, 2018. Like every other evaluator of record, Dr. Guberman's neurological examination of the claimant's upper extremities revealed no motor or sensory abnormalities consistent with a true cervical radiculopathy. So, while several medical evaluators of record have diagnosed C5-6 radiculopathy in this claim, those diagnoses appear to have been based solely upon the claimant's subjective complaints, as the record contains little to no objective medical evidence to support such a diagnosis. In light of the foregoing, it is found that the weight of the objective medical evidence does not support a diagnosis of true radiculopathy in this claim.

Therefore, based upon the evidence of record, and for the reasons set forth above, it is found the claimant has failed to prove by a preponderance of evidence that C5-6 spondylosis with C6 radiculopathy should be added as a compensable diagnosis in the claim. Accordingly, the Order of September 17, 2018, must be affirmed insofar as it denied C5-6 spondylosis with C6 radiculopathy as a compensable diagnosis in the claim.

II. Closure of TTD

This claim is before the Office of Judges on the claimant's protest to the Order of October 19, 2017, which closed the claim for temporary total disability (TTD) benefits. W.Va. Code § 23-4-7a suspends temporary total disability benefits, once commenced, at the earliest of the following events: (a) upon information that the claimant has reached his/her maximum degree of medical improvement; or (b) has been released to return to work; or (c) has actually returned to work. W.Va. Code §23-4-1c provides that temporary total disability benefits are only paid during the healing or recovery period. Allen v. State Workers' Compensation Commissioner, 173 W.Va. 238, 314 S.E.2d 401 (1984).

This claim is only compensable for right shoulder sprain, upper back strain, and neck pain. The claimant's treating physician, Dr. Jin, found the claimant to be at MMI and in need of no further treatment for his compensable conditions on October 10, 2017. Following Dr. Jin's finding of MMI, the claim administrator closed the claim for TTD by Order dated October 19, 2017.

Although Dr. Vaglienti and Dr. France both opined that the claimant remained totally disabled subsequent to Dr. Jin's finding of MMI, Dr. Vaglienti's and Dr. France's findings were based upon the non-compensable diagnosis of cervical spondylosis with radiculopathy. Simply put, there is no reliable medical evidence of record to support a finding that the claimant remained temporarily and totally disabled due to a compensable diagnosis at the time his claim was closed for TTD on October 19, 2017.

Considering only the recognized compensable conditions in the claim, Dr. Jin's findings and conclusions provide the most accurate and reliable assessment of the claimant's compensable diagnoses. Dr. Jin concluded on October 10, 2017, that the claimant's compensable diagnoses of right shoulder strain and upper back strain had reached MMI and required no additional treatment. Dr. Jin's opinion on this point is supported by W.Va. C.S.R §§ 85-20-35.5 and 40.5. W.Va. C.S.R § 85-20-35.5 states that the estimated duration of care for a cervical sprain/strain should not exceed 8 weeks, while W.Va. C.S.R § 85-20-40.5 holds that the estimated duration of care for a shoulder sprain should not exceed 6 weeks. Therefore, according to the weight of the evidence of record, the claimant had reached MMI in regard to his compensable conditions at the time the claim administrator issued the Order of October 19, 2017 closing the claim for TTD. Accordingly, the October 19, 2017 was appropriate and should be affirmed.

III. Denial of Reopening for TTD

This claim is before the Office of Judges on the claimant's protest to the Order of September 17, 2018, which denied the claimant's request to reopen the claim for TTD benefits. For purposes of obtaining a reopening of a workers' compensation claim under the provisions of W.Va. Code §§ 23-5-2 and 23-5-3 the claimant must make application in writing showing a progression or aggravation of the compensable condition or some other fact or facts which were not previously considered which would entitle the claimant to greater benefits than he or she has already received.

As defined in *Harper v. State Workmen's Compensation Commissioner*, 160 W.Va. 364, 234 S.E.2d 779 (1977), "cause" for further adjustment of an award has been interpreted as a showing of a prima facie cause which means nothing more than any evidence which would tend to justify, but not compel, the inference that there has been a progression or aggravation of the former injury.

The claimant's reopening application was completed by Dr. France on August 21, 2018. Dr. France indicated that the claimant was unable to work due to the diagnosis of C5-6 spondylosis with radiculopathy. As fully explained above, C5-6 spondylosis with radiculopathy is a non-compensable degenerative condition. Accordingly, it must be found that Dr. France's request to reopen the claim is based upon a non-compensable diagnosis. Moreover, the record

contains no reliable medical evidence of a progression or aggravation of a compensable condition or of new facts not previously considered which would entitle the claimant to a reopening of the claim. For these reasons, the Order of September 17, 2018, denying the claimant's reopening request must be affirmed.

IV. Denial of Treatment

This claim is also before the Office of Judges on the claimant's protest to the Order of September 15, 2017, which denied a request for trigger point injections, massage therapy, and referrals to a chiropractor and dietician. The issue is whether the claimant is entitled to the requested medical treatment. The claim administrator must provide medically related and reasonably required medical treatment, health care or healthcare goods and services under the W.Va. Code §23-4-3 and 85 CSR 20. In making this determination, the treatment must be for an injury or disease received in the course of and as a result of employment.

In regard to the request for trigger point injections, the record indicates that Dr. Vaglianti evaluated the claimant on July 6, 2017, following a series of cervical facet injections and medial branch blocks to treat his complaints of neck pain. The claimant reported no relief following the medial branch blocks and continued to complain of constant neck pain with radiation down the right shoulder and into the lateral arm with numbness and tingling. Dr. Vaglianti noted the claimant had tried and failed physical therapy, TENS, NSAID's acetaminophen, and muscle relaxers. Dr. Vaglianti diagnosed the claimant with right shoulder pain, neck pain, and myofascial muscle pain, and he recommended additional treatment in the form of trigger point injections, massage therapy, and referrals to a chiropractor and dietician. According to a procedure note from Dr. Vaglianti dated January 17, 2018, the claimant was given trigger point injections with ultrasound for a pre-procedure diagnosis of right shoulder pain, neck pain, and myofascial pain.

The compensable conditions in this claim are right shoulder strain, upper back strain, and neck pain. After closely reviewing Dr. Vaglianti's medical notes from July 2017 and January 2018, it is found that his requests for trigger point injections and referrals to massage therapist and a chiropractor were medically necessary and reasonably related to the compensable injury. Dr. Vaglianti's notes from July 2017 indicate that his request for trigger point injections and referrals for message therapy and chiropractic treatment were based upon the claimant's continued complaints of neck pain and his failure to respond to other conservative treatment measures. In that regard, neck pain is a recognized compensable diagnosis in the claim, and the claimant's complaints of neck and right shoulder pain can reasonably be attributed to the compensable conditions of right shoulder and upper back/neck sprain/strain. In that regard, the requested treatments appear to be medically necessary based upon the available medical evidence from Dr. Vaglianti.

While there may be some question as to whether the claimant's ongoing symptoms in July 2017 were actually related to the compensable diagnoses of right shoulder and neck sprain, the evidence of record does not support a finding that the treatment requests made by Dr. Vaglianti in July 2017 were directed at non-compensable issues. For instance, Dr. Vaglianti's treatment notes from July 2017 do not indicate that the requested treatments were directed at treating the claimant's non-compensable cervical spondylosis with radiculopathy or any other non-compensable condition. Moreover, there is no other medical opinion of record to satisfactorily refute Dr. Vaglianti's July 2017 treatment requests in relation to the compensable injury. Although Dr. Jin did opine in May 2017 that the claimant was "probably at MMI," she was still recommending follow-up medical treatment at that time with Dr. Bal and the pain clinic. The record shows that Dr. Jin did not explicitly find the claimant to be at MMI and in need of no further medical treatment until October 2017, or several months after Dr. Vaglianti's request for treatment. Accordingly, it is found the claimant has submitted sufficient evidence to support the medical necessity of the trigger point injections and requests for massage therapy and a chiropractor.

Although Dr. Vaglianti also requested a referral to dietician, there is no medical evidence of record to support such a referral. Specifically, Dr. Vaglianti does not adequately explain why a referral to a dietician is medically necessary for treatment of the claimant's complaints of right shoulder and neck pain.

Therefore, based upon the evidence of record, and for the reasons set forth above, it is found that the claimant has submitted sufficient evidence to support a finding that the requests for trigger point injections and referrals to a massage therapist and chiropractor were medically necessary and reasonably related to the treatment of a compensable condition. The record does not, however, support the request for referral to a dietician. Accordingly, the Order of September 15, 2017, should be reversed insofar as it denied trigger point injections and referrals to a massage therapist and chiropractor, and affirmed insofar as it denied referral to a dietician.

CONCLUSIONS OF LAW:

1. The claimant has failed to prove by a preponderance of evidence that C5-6 spondylosis with C6 radiculopathy should be added as a compensable diagnosis in the claim.

Accordingly, it is hereby ORDERED that the Claims Administrator's Orders of September 17, 2018, be AFFIRMED.

2. The weight of the evidence establishes that the claimant had reached MMI regarding his compensable conditions at the time the claim administrator issued the Order of October 19, 2017, closing the claim for TTD.

Accordingly, it is hereby ORDERED that the Claims Administrator's Orders of October 19, 2017, be AFFIRMED.

3. The claimant has failed to show by a preponderance of evidence that the claim should be reopened for TTD benefits.

Accordingly, it is hereby ORDERED that the Claim Administrator's Order of September 17, 2018, be AFFIRMED.

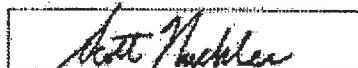
4. The claimant has shown by a preponderance of evidence that the requests for trigger point injections and referrals to a chiropractor and massage therapist were medically necessary and reasonably related to the treatment of a compensable condition. The claimant has failed to show, however, that the request for a referral to a dietician is medically necessary in the claim.

Accordingly, it is hereby ORDERED that the Claim Administrator's Order of September 15, 2017, be MODIFIED as follows. The Order is REVERSED insofar as it denied trigger point injections and referrals to a chiropractor and massage therapist. The Order is AFFIRMED insofar as it denied referral to a dietician. It is further ORDERED that the requests for trigger point injections and chiropractic and massage therapy referrals be approved for payment in the claim.

APPEAL RIGHTS:

Under the provisions of W.Va. Code §23-5-12, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. The appeal shall be filed with the Office of Judges who will convey said filing to the Workers' Compensation Board of Review.

Date: June 3, 2019


Scott Nuckles
Administrative Law Judge

SN:lg

cc: JAMES MOORE
ALLAN NORMAN KARLIN - COUNSEL FOR CLAIMANT
ARCH COAL, INC
JEFFREY B BRANNON - COUNSEL FOR EMPLOYER
AIG CLAIMS INC

JCN: 2017012631

Date: June 3, 2019

Record Considered

Issue:

The Claimant's protest to the Claims Administrator's order of September 15, 2017, regarding TREATMENT DENIED.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: MedExpress Records 11/17/16 to 1/16/17

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: Workers Compensation Duty Form-11/17/16-12/5/16

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 1/18/2019
Author: Mon Health Medical Center/MRI Cervical Spine

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 3/19/2018
Author: Monongalia General Hospital/MRI CERVICAL SPINE UN

Document Type: Not Specified
Document Date: 12/9/2016
Submit Date: 3/19/2018
Author: PRO PT/PT Initial Exam

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 3/12/2018
Author: Chuanfang Jin MD 1/5/17 to 10/10/17

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 2/4/2019

Author: Chuanfang Jin MD 1/5/17-5/8/17

Document Type: Not Specified

Document Date: 4/3/2017

Submit Date: 3/12/2018

Author: WVU Pain Center Records 4/3/17 and 6/20/17

Document Type: Not Specified

Document Date: 4/3/2017

Submit Date: 2/4/2019

Author: Richard Vaglienti MD 4/3/17-1/17/18

Document Type: Not Specified

Document Date: 9/15/2017

Submit Date: 2/15/2019

Author: CLAIM ADMIN ORDER - TREATMENT DENIED

Document Type: Not Specified

Document Date: 1/5/2018

Submit Date: 2/4/2019

Author: Jonathan Pratt MD 1/5/18-3/9/18

Document Type: Not Specified

Document Date: 1/17/2018

Submit Date: 3/12/2018

Author: Richard Vaglienti MD - TRIGGER POINT INJECTION

Document Type: Not Specified

Document Date: 1/17/2018

Submit Date: 3/15/2018

Author: Richard Vaglienti MD 1/17/18-2/15/18

Document Type: Not Specified

Document Date: 2/1/2018

Submit Date: 1/18/2019

Author: MRI Spine Cervical WO Contrast

Document Type: Not Specified

Document Date: 2/1/2018

Submit Date: 3/12/2018

Author: MRI Spine Cervical

Document Type: Not Specified

Document Date: 3/16/2018

Submit Date: 3/19/2018

Author: Richard Vaglienti MD

Document Type: Not Specified

Document Date: 3/19/2018

Submit Date: 3/19/2018

Author: Affidavit/James Moore Jr.

Document Type: Not Specified

Document Date: 3/19/2018

Submit Date: 3/19/2018

Author: Affidavit/Nathan Moore

Document Type: Not Specified

Document Date: 5/8/2018

Submit Date: 2/6/2019

Author: DR. JOHN FRANCE X-RAY

Document Type: Not Specified

Document Date: 5/8/2018

Submit Date: 2/6/2019

Author: DR. JOHN FRANCE

Document Type: Not Specified

Document Date: 8/21/2018

Submit Date: 1/18/2019

Author: DIAGNOSIS UPDATE FORM/REPORT - DR. JOHN
FRANCE

Document Type: Not Specified

Document Date: 9/17/2018

Submit Date: 1/18/2019

Author: CAO - DENIED REOPENING FOR TTD BENEFITS

Document Type: Not Specified

Document Date: 9/17/2018

Submit Date: 1/18/2019

Author: CAO - SECONDARY COND DENIED: SPONDYLOSIS
W/C6 RADICULOPATHY & NECK PAIN

Document Type: Not Specified

Document Date: 11/1/2018

Submit Date: 2/15/2019

Author: DR. JOHN FRANCE - CURRICULUM VITAE

Document Type: Not Specified

Document Date: 11/6/2018

Submit Date: 1/18/2019

Author: Bruce Guberman MD - IME

Document Type: Not Specified

Document Date: 12/4/2018

Submit Date: 2/20/2019

Author: DR. RICHARD VAGLIENTI - CURRICULUM
VITAE

Document Type: Not Specified

Document Date: 12/20/2018

Submit Date: 12/21/2018
Author: Proof of Service/Subpoena Dues Tecum - KATHY
PITMAN

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice to Take Depo of Dr. ChuanFang
Jin

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice Duces Tecum to take Depo of
Kathy Pitman

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/15/2019
Author: DR. CHUANFANG JIN, MD. - DEPOSITION

Document Type: Not Specified
Document Date: 2/14/2019
Submit Date: 2/20/2019
Author: WVU MEDICINE/DR. RICHARD VAGLIENTI, MD

Document Type: Not Specified
Document Date: 2/15/2019
Submit Date: 2/15/2019
Author: DR. BRUCE GUBERMAN - CURRICULUM VITAE

Employer Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: EMPLOYEES' & PHYSICIAN'S REPORT OF
INJURY

Document Type: Not Specified
Document Date: 11/28/2016
Submit Date: 3/19/2018
Author: CAO - ACCEPTANCE OF CLAIM/TTD CLOSURE

Document Type: Not Specified
Document Date: 1/9/2017
Submit Date: 3/19/2018

Author: CAO - SECONDARY CONDITION APPROVED: NECK
PAIN

Document Type: Not Specified

Document Date: 2/23/2017

Submit Date: 3/19/2018

Author: CLAIM ADMIN NOTICE - SUSPENSION OF TTD
BENEFITS

Document Type: Not Specified

Document Date: 5/8/2017

Submit Date: 3/19/2018

Author: Chuanfang Jin MD/Progress Note

Document Type: Not Specified

Document Date: 9/12/2017

Submit Date: 3/19/2018

Author: Chuanfang Jin MD/Progress Note

Document Type: Not Specified

Document Date: 9/15/2017

Submit Date: 3/19/2018

Author: CAO - TREATMENT DENIED

Document Type: Not Specified

Document Date: 9/15/2017

Submit Date: 3/19/2018

Author: Claimant Counsel Request for a PPD
Evaluation

Document Type: Not Specified

Document Date: 10/10/2017

Submit Date: 3/19/2018

Author: Chuanfang Jin MD - PROGRESS NOTE

Document Type: Not Specified

Document Date: 10/19/2017

Submit Date: 3/19/2018

Author: CAO - CLOSING CLAIM FOR TTD BENEFITS

Document Type: Not Specified

Document Date: 10/24/2017

Submit Date: 3/19/2018

Author: Claims Admin Order - 1% PPD AWARD

Document Type: Not Specified

Document Date: 2/15/2018

Submit Date: 2/22/2019

Author: Richard Vaglianti MD

Document Type: Not Specified

Document Date: 4/18/2018

Submit Date: 2/22/2019
Author: Aging Analysis Report/MRI Cervical Spine

Document Type: Not Specified
Document Date: 9/26/2018
Submit Date: 2/22/2019
Author: ALJ DECISION - AFFIRM CAO DATED 12/7/17

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/22/2019
Author: Depo/Chuanfang Jin MD

Document Type: Not Specified
Document Date: 2/22/2019
Submit Date: 2/22/2019
Author: CV of Jonathan Luchs MD/Double Blind
Method

CLOSING ARGUMENTS:

Party Submitted: Employer
Letter Date: 3/7/2019
Party Submitted: Employer
Letter Date: 3/29/2018
Party Submitted: Claimant
Letter Date: 4/6/2018
Party Submitted: Claimant
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/21/2019
Party Submitted: Claimant
Letter Date: 3/18/2019
Party Submitted: Claimant
Letter Date: 3/29/2018

JCN: 2017012631

Date: June 3, 2019

Issue:

The Claimant's protest to the Claims Administrator's order of October 19, 2017, regarding CLOSING THE CLAIM FOR TTD BENEFITS.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: MedExpress Records 11/17/16 to 1/16/17

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: Workers Compensation Duty Form-11/17/16-12/5/16

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 1/18/2019
Author: Mon Health Medical Center/MRI Cervical Spine

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 3/19/2018
Author: Monongalia General Hospital/MRI CERVICAL SPINE UN

Document Type: Not Specified
Document Date: 12/9/2016
Submit Date: 3/19/2018
Author: PRO PT/PT Initial Exam

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 1/31/2018
Author: WVU Medicine Chuanfang Jin MD 1/5/17 to 10/10/17

Document Type: Not Specified
Document Date: 1/5/2017

James Moore

JCN: 2017012631

Submit Date: 2/4/2019
Author: Chuanfang Jin MD 1/5/17-5/8/17

Document Type: Not Specified
Document Date: 4/3/2017
Submit Date: 2/4/2019
Author: Richard Vaglienti MD 4/3/17-1/17/18

Document Type: Not Specified
Document Date: 4/3/2017
Submit Date: 1/31/2018
Author: WVU Pain Center Records 4/3/17 and 6/20/17

Document Type: Not Specified
Document Date: 9/15/2017
Submit Date: 2/15/2019
Author: CLAIM ADMIN ORDER - TREATMENT DENIED

Document Type: Not Specified
Document Date: 1/5/2018
Submit Date: 2/4/2019
Author: Jonathan Pratt MD 1/5/18-3/9/18

Document Type: Not Specified
Document Date: 1/17/2018
Submit Date: 3/15/2018
Author: Richard Vaglienti MD 1/17/18-2/15/18

Document Type: Not Specified
Document Date: 1/31/2018
Submit Date: 1/31/2018
Author: MRI REPORTS - CERVICAL SPINE & RIGHT SHOULDER

Document Type: Not Specified
Document Date: 2/1/2018
Submit Date: 1/18/2019
Author: MRI Spine Cervical WO Contrast

Document Type: Not Specified
Document Date: 3/16/2018
Submit Date: 3/19/2018
Author: Richard Vaglienti MD

Document Type: Not Specified
Document Date: 3/19/2018
Submit Date: 3/19/2018
Author: Affidavit/James Moore Jr.

Document Type: Not Specified
Document Date: 3/19/2018

Submit Date: 3/19/2018
Author: Affidavit/Nathan Moore

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE X-RAY

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 8/21/2018
Submit Date: 1/18/2019
Author: DIAGNOSIS UPDATE FORM/REPORT - DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - DENIED REOPENING FOR TTD BENEFITS

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - SECONDARY COND DENIED: SPONDYLOSIS W/C6 RADICULOPATHY & NECK PAIN

Document Type: Not Specified
Document Date: 11/1/2018
Submit Date: 2/15/2019
Author: DR. JOHN FRANCE - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 11/6/2018
Submit Date: 1/18/2019
Author: Bruce Guberman MD - IME

Document Type: Not Specified
Document Date: 12/4/2018
Submit Date: 2/20/2019
Author: DR. RICHARD VAGLIENTI - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 12/20/2018
Submit Date: 12/21/2018
Author: Proof of Service/Subpoena Dues Tecum - KATHY PITMAN

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice to Take Depo of Dr. ChuanFang Jin

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice Duces Tecum to take Depo of Kathy Pitman

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/15/2019
Author: DR. CHUANFANG JIN, MD. - DEPOSITION

Document Type: Not Specified
Document Date: 2/14/2019
Submit Date: 2/20/2019
Author: WVU MEDICINE/DR. RICHARD VAGLIENTI, MD

Document Type: Not Specified
Document Date: 2/15/2019
Submit Date: 2/15/2019
Author: DR. BRUCE GUBERMAN - CURRICULUM VITAE

Employer Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 3/19/2018
Author: EMPLOYEES' & PHYSICIAN'S REPORT OF INJURY

Document Type: Not Specified
Document Date: 11/28/2016
Submit Date: 3/19/2018
Author: CAO - ACCEPTANCE OF CLAIM/TTD CLOSURE

Document Type: Not Specified
Document Date: 1/9/2017
Submit Date: 3/19/2018
Author: CAO - SECONDARY CONDITION APPROVED: NECK PAIN

Document Type: Not Specified

Document Date: 2/23/2017
Submit Date: 3/19/2018
Author: CLAIM ADMIN NOTICE - SUSPENSION OF TTD
BENEFITS

Document Type: Not Specified
Document Date: 5/8/2017
Submit Date: 3/19/2018
Author: Chuanfang Jin MD/Progress Note

Document Type: Not Specified
Document Date: 9/12/2017
Submit Date: 3/19/2018
Author: Chuanfang Jin MD/Progress Note

Document Type: Not Specified
Document Date: 9/15/2017
Submit Date: 3/19/2018
Author: CAO - TREATMENT DENIED

Document Type: Not Specified
Document Date: 9/15/2017
Submit Date: 3/19/2018
Author: Claimant Counsel Request for a PPD
Evaluation

Document Type: Not Specified
Document Date: 10/10/2017
Submit Date: 3/19/2018
Author: Chuanfang Jin MD - PROGRESS NOTE

Document Type: Not Specified
Document Date: 10/19/2017
Submit Date: 3/19/2018
Author: CAO - CLOSING CLAIM FOR TTD BENEFITS

Document Type: Not Specified
Document Date: 10/24/2017
Submit Date: 3/19/2018
Author: Claims Admin Order - 1% PPD AWARD

Document Type: Not Specified
Document Date: 2/15/2018
Submit Date: 2/22/2019
Author: Richard Vaglianti MD

Document Type: Not Specified
Document Date: 4/18/2018
Submit Date: 2/22/2019
Author: Aging Analysis Report/MRI Cervical Spine

Document Type: Not Specified

James Moore

JCN: 2017012631

Document Date: 9/26/2018
Submit Date: 2/22/2019
Author: ALJ DECISION - AFFIRM CAO DATED 12/7/17

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/22/2019
Author: Depo/Chuanfang Jin MD

Document Type: Not Specified
Document Date: 2/22/2019
Submit Date: 2/22/2019
Author: CV of Jonathan Luchs MD/Double Blind
Method

CLOSING ARGUMENTS:

Party Submitted: Employer
Letter Date: 3/29/2018
Party Submitted: Claimant
Letter Date: 3/29/2018
Party Submitted: Employer
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/18/2019
Party Submitted: Claimant
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/21/2019
Party Submitted: Claimant
Letter Date: 4/6/2018

JCN: 2017012631
Date: June 3, 2019

Issue:

The Claimant's protest to the Claims Administrator's order of September 17, 2018, regarding REOPENING FOR TEMPORARY TOTAL BENEFITS.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 1/30/2019
Author: MedExpress 11/17/16-1/16/17

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 1/18/2019
Author: Mon Health Medical Center/MRI Cervical
Spine

Document Type: Not Specified
Document Date: 12/9/2016
Submit Date: 1/30/2019
Author: Pro PT Initial Examination

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 2/4/2019
Author: Chuanfang Jin MD 1/5/17-5/8/17

Document Type: Not Specified
Document Date: 4/3/2017
Submit Date: 2/4/2019
Author: Richard Vaglianti MD 4/3/17-1/17/18

Document Type: Not Specified
Document Date: 9/15/2017
Submit Date: 2/15/2019
Author: CLAIM ADMIN ORDER - TREATMENT DENIED

Document Type: Not Specified
Document Date: 1/5/2018
Submit Date: 2/4/2019
Author: Jonathan Pratt MD 1/5/18-3/9/18

Document Type: Not Specified
Document Date: 2/1/2018
Submit Date: 1/18/2019
Author: MRI Spine Cervical WO Contrast

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE X-RAY

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 8/21/2018
Submit Date: 1/18/2019
Author: DIAGNOSIS UPDATE FORM/REPORT - DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - DENIED REOPENING FOR TTD BENEFITS

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - SECONDARY COND DENIED: SPONDYLOSIS W/C6 RADICULOPATHY & NECK PAIN

Document Type: Not Specified
Document Date: 11/1/2018
Submit Date: 2/15/2019
Author: DR. JOHN FRANCE - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 11/6/2018
Submit Date: 1/18/2019
Author: Bruce Guberman MD - IME

Document Type: Not Specified
Document Date: 12/4/2018
Submit Date: 2/20/2019
Author: DR. RICHARD VAGLIENTI - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 12/20/2018
Submit Date: 12/21/2018
Author: Proof of Service/Subpoena Dues Tecum - KATHY

PITMAN

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice to Take Depo of Dr. ChuanFang Jin

Document Type: Not Specified
Document Date: 1/3/2019
Submit Date: 1/3/2019
Author: Amended Notice Duces Tecum to take Depo of Kathy Pitman

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/15/2019
Author: DR. CHUANFANG JIN, MD. - DEPOSITION

Document Type: Not Specified
Document Date: 2/14/2019
Submit Date: 2/20/2019
Author: WVU MEDICINE/DR. RICHARD VAGLIENTI, MD

Document Type: Not Specified
Document Date: 2/15/2019
Submit Date: 2/15/2019
Author: DR. BRUCE GUBERMAN - CURRICULUM VITAE

Employer Evidence

Document Type: Not Specified
Document Date: 2/15/2018
Submit Date: 2/22/2019
Author: Richard Vaglienti MD

Document Type: Not Specified
Document Date: 4/18/2018
Submit Date: 2/22/2019
Author: Aging Analysis Report/MRI Cervical Spine

Document Type: Not Specified
Document Date: 9/26/2018
Submit Date: 2/22/2019
Author: ALJ DECISION - AFFIRM CAO DATED 12/7/17

Document Type: Not Specified

James Moore

JCN: 2017012631

Document Date: 1/9/2019
Submit Date: 2/22/2019
Author: Depo/Chuanfang Jin MD

Document Type: Not Specified
Document Date: 2/22/2019
Submit Date: 2/22/2019
Author: CV of Jonathan Luchs MD/Double Blind
Method

CLOSING ARGUMENTS:

Party Submitted: Employer
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/18/2019
Party Submitted: Claimant
Letter Date: 3/21/2019

JCN: 2017012631
Date: June 3, 2019

Issue:

The Claimant's protest to the Claims Administrator's order of September 17, 2018, regarding COMPENSABILITY OF ADDITIONAL CONDITIONS IN THIS CLAIM.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 1/30/2019
Author: MedExpress 11/17/16-1/16/17

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 1/18/2019
Author: Mon Health Medical Center/MRI Cervical Spine

Document Type: Not Specified
Document Date: 12/9/2016
Submit Date: 1/30/2019
Author: Pro PT Initial Examination

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 2/4/2019
Author: Chuanfang Jin MD 1/5/17-5/8/17

Document Type: Not Specified
Document Date: 4/3/2017
Submit Date: 2/4/2019
Author: Richard Vaglianti MD 4/3/17-1/17/18

Document Type: Not Specified
Document Date: 9/15/2017
Submit Date: 2/15/2019
Author: CLAIM ADMIN ORDER - TREATMENT DENIED

Document Type: Not Specified
Document Date: 1/5/2018
Submit Date: 2/4/2019
Author: Jonathan Pratt MD 1/5/18-3/9/18

Document Type: Not Specified
Document Date: 2/1/2018
Submit Date: 1/18/2019
Author: MRI Spine Cervical WO Contrast

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE X-RAY

Document Type: Not Specified
Document Date: 5/8/2018
Submit Date: 2/6/2019
Author: DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 8/21/2018
Submit Date: 1/18/2019
Author: DIAGNOSIS UPDATE FORM/REPORT - DR. JOHN FRANCE

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - DENIED REOPENING FOR TTD BENEFITS

Document Type: Not Specified
Document Date: 9/17/2018
Submit Date: 1/18/2019
Author: CAO - SECONDARY COND DENIED: SPONDYLOSIS W/C6 RADICULOPATHY & NECK PAIN

Document Type: Not Specified
Document Date: 11/1/2018
Submit Date: 2/15/2019
Author: DR. JOHN FRANCE - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 11/6/2018
Submit Date: 1/18/2019
Author: Bruce Guberman MD - IME

Document Type: Not Specified
Document Date: 12/4/2018
Submit Date: 2/20/2019
Author: DR. RICHARD VAGLIENTI - CURRICULUM VITAE

Document Type: Not Specified
Document Date: 12/20/2018
Submit Date: 12/21/2018

Author: Proof of Service/Subpoena Dues Tecum - KATHY
PITMAN

Document Type: Not Specified

Document Date: 1/3/2019

Submit Date: 1/3/2019

Author: Amended Notice to Take Depo of Dr. ChuanFang
Jin

Document Type: Not Specified

Document Date: 1/3/2019

Submit Date: 1/3/2019

Author: Amended Notice Duces Tecum to take Depo of
Kathy Pitman

Document Type: Not Specified

Document Date: 1/9/2019

Submit Date: 2/15/2019

Author: DR. CHUANFANG JIN, MD. - DEPOSITION

Document Type: Not Specified

Document Date: 2/14/2019

Submit Date: 2/20/2019

Author: WVU MEDICINE/DR. RICHARD VAGLIENTI, MD

Document Type: Not Specified

Document Date: 2/15/2019

Submit Date: 2/15/2019

Author: DR. BRUCE GUBERMAN - CURRICULUM VITAE

Employer Evidence

Document Type: Not Specified

Document Date: 2/15/2018

Submit Date: 2/22/2019

Author: Richard Vaglienti MD

Document Type: Not Specified

Document Date: 4/18/2018

Submit Date: 2/22/2019

Author: Aging Analysis Report/MRI Cervical Spine

Document Type: Not Specified

Document Date: 9/26/2018

Submit Date: 2/22/2019

Author: ALJ DECISION - AFFIRM CAO DATED 12/7/17

James Moore

JCN: 2017012631

Document Type: Not Specified
Document Date: 1/9/2019
Submit Date: 2/22/2019
Author: Depo/Chuanfang Jin MD

Document Type: Not Specified
Document Date: 2/22/2019
Submit Date: 2/22/2019
Author: CV of Jonathan Luchs MD/Double Blind
Method

CLOSING ARGUMENTS:

Party Submitted: Claimant
Letter Date: 3/18/2019
Party Submitted: Employer
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/7/2019
Party Submitted: Claimant
Letter Date: 3/21/2019

017012631

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF REVIEW**

JAMES MOORE,
Appellant

v.

ARCH COAL, INC,
Appellee

Appeal No. 2054350
JCN: 2017012631
DOI 11/14/2016

ORDER

The following case is an appeal by the claimant from a final order of the Workers' Compensation Office of Judges dated June 3, 2019, insofar as it affirmed the claims administrator's order dated October 19, 2017, and two orders dated September 17, 2018.

The Workers' Compensation Board of Review has completed a thorough review of the record, briefs, and arguments. As required, the Workers' Compensation Board of Review has evaluated the decision of the Office of Judges in light of the standard of review contained in West Virginia Code § 23-5-12, as well as the applicable statutory language as interpreted by the West Virginia Supreme Court of Appeals.

Upon our review of this case, we have determined to modify the decision of the Office of Judges. The Board adopts the findings of fact and conclusions of law of the Administrative Law Judge's Decision dated June 3, 2019, which relate to the issues on appeal, and the same are incorporated herein by reference, made a part hereof, and are ratified, confirmed and approved with the following modifications and addition:

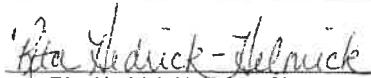
1. In Findings of Fact Nos. 1, 3, and 9, the evidence is located in the electronic claim file under the date of November 17, 2016.
2. In Findings of Fact Nos. 10 and 12, the evidence is under January 5, 2017.
3. In Findings of Fact Nos. 14 and 15, the evidence is under April 3, 2017.
4. In Finding of Fact No. 21, the order was issued in a different claim.
5. In Finding of Fact No. 25, the evidence is under January 5, 2018.
6. In Finding of Fact No. 32, the evidence is under May 12, 2018.
7. In Finding of Fact No. 34, the evidence is under May 8, 2018.
8. In Finding of Fact No. 35, the evidence is under August 21, 2018.
9. On August 21, 2018, John France, MD, requested that C5-C6 spondylosis with C6 radiculopathy and neck pain be added as compensable diagnoses in the claim. On January 9, 2017, the claims administrator added neck pain as a compensable diagnosis in the claim. Consequently, the Administrative Law Judge noted that the order dated September 17, 2018, must be reversed insofar as it denied neck pain as a compensable diagnosis. On appeal, the claimant argues that radiculopathy or radicular pain should be added as a compensable component of the claim, citing Gill v. City of Charleston, 236 W.Va. 737, 783 S.E.2d 857 (2016). The Board finds that Gill and the subsequent case law do not support the claimant's position. Therefore, in the absence of further clarification regarding the Gill case, the Board finds the Administrative Law Judge's Decision is not clearly wrong. The modification is for the purpose of clarifying the ruling regarding neck pain.

Accordingly, it is ORDERED as follows:

1. The final order of the Workers' Compensation Office of Judges dated June 3, 2019, is MODIFIED to reflect that the claims administrator's order dated September 17, 2018, is REVERSED insofar as it denied the request to add neck pain as a compensable component of the claim. Neck pain is a compensable component of the claim.
2. The final order dated June 3, 2019, is AFFIRMED insofar as it affirmed the order dated October 19, 2017; the order dated September 17, 2018, insofar as it denied the request to add C5-C6 spondylosis with C6 radiculopathy; and the order dated September 17, 2018, which denied the request to reopen the claim for temporary total disability benefits.

From any final decision of the Board, including any order of remand, an application for review may be prosecuted by any party to the Supreme Court of Appeals within thirty days from the date of this order. The appeal shall be filed with Edythe Nash Gaiser, Clerk of the West Virginia Supreme Court of Appeals, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

DATED: DECEMBER 13, 2019


Rita Hedrick-Helmick, Chairperson

cc: JAMES MOORE
ALLAN N. KARLIN
ARCH COAL, INC
JEFFREY B. BRANNON
AIG CLAIMS, INC.

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES
P.O. Box 2233, Charleston, WV 25328
Telephone (304) 558-0852**

IN THE MATTER OF:

James Moore
Claimant

JCN: 2017012631

and

DOI: 11/14/2016

Arch Coal, Inc.,
Employer

DECISION OF ADMINISTRATIVE LAW JUDGE

PARTIES:

Claimant, James Moore, by counsel, Allan Karlin
Employer, Arch Coal, Inc., by counsel, Jeffrey Brannon

ISSUES:

The claimant protested the Claim Administrator's Order of September 26, 2017, granting no permanent partial disability award.

DECISION:

It is hereby ORDERED that the Claim Administrator's Order of September 26, 2017, be AFFIRMED.

RECORD CONSIDERED:

See attached, Record Considered.

FINDINGS OF FACT:

1. The claimant filed a workers' compensation claim for an injury he sustained at work on November 14, 2016. According to his application for benefits, the claimant was operating a shuttle car on November 14, 2016, when the brakes locked up. The claimant struck his head on the canopy of the shuttle car and jerked his right shoulder. The physician's portion of the claim application

indicated the claimant had sustained an occupational injury resulting in a right shoulder strain and upper back strain.

2. The claimant was evaluated at Med-Express on November 17, 2016, for complaints of neck and shoulder pain following a work-related injury on November 14, 2016. The claimant struck his head on a canopy and sustained a jerking-type injury to his right upper arm and shoulder while operating a shuttle car at work. The claimant complained of pain in the right upper arm, right shoulder, and neck. The claimant was diagnosed with a sprain of the right shoulder and muscle spasm. The claimant was prescribed medication and released to modified duty work with no lifting or carrying over 10 pounds with the right arm. The claimant was to avoid pushing, pulling, reaching, and overhead reaching with the right arm.

3. The claimant was reevaluated at Med-Express on November 28, 2016, and December 5, 2016. The claimant continued to complain of neck and right shoulder pain. The claimant was working modified duty with restricted use of the right arm. The assessment was sprain of the right shoulder joint, neck pain, and right shoulder pain. MRI studies of the claimant's neck and right shoulder were ordered, and the claimant was referred to physical therapy. The claimant was to continue under his prior work modifications with limited use of the right arm.

4. An MRI of the claimant's cervical spine was performed on December 3, 2016. The MRI revealed degenerative disc changes at C4-5 with a left posterior paracentral disc bulge or small herniated nucleus pulposus with equivocal ventral nerve root impingement. A diffuse posterior disc bulge without definite nerve root impingement was noted at the C5-6 level.

5. The claimant was seen for an initial physical therapy evaluation on December 9, 2016. The claimant presented with complaints of right shoulder and neck pain following an injury at work. Recent MRI studies had revealed two bulging discs in the claimant's neck and a torn rotator cuff muscle in the right shoulder. The claimant was continuing to work with restrictions. The claimant complained of pain in the cervical area going down into the right periscapular area with a pinprick sensation in the right periscapular area. The claimant had good movement but reported decreased strength and function. The claimant also reported intermittent numbness and tingling into the right hand and all 5 fingers of the right hand. Based upon the claimant's symptoms, the physical therapist suspected cervical intervertebral disc disorder with right upper extremity radiculopathy and a right rotator cuff strain. The therapist recommended eight weeks of physical therapy, two to three times per week.

6. The claimant was examined and treated by Dr. ChuanFang Jin on January 5, 2017, for complaints of neck and right shoulder pain resulting from a work-related injury on November 14, 2016. The claimant was initially treated at Med-Express and placed on modified duty. The claimant reported daily neck pain

that radiated to the right shoulder and right shoulder pain with tingling, numbness, and weakness in the fingers of the right hand. Imaging studies of the cervical spine revealed degenerative disc disease at C4-5 with a left posterior disc bulge. Dr. Jin opined that the claimant's recent work injury had exacerbated his cervical degenerative disc disease. The claimant also had imaging evidence of a partial right rotator cuff tear. Dr. Jin recommended physical therapy and a TENS unit. The claimant was to continue with modified duty work.

7. The claimant was reevaluated at Med-Express on January 16, 2017. The claimant continued to report pain in the right shoulder and neck. Recent MRI studies revealed bulging cervical discs with equivocal nerve impingement and a partial thickness tear of the right rotator cuff. The claimant was diagnosed with cervical disc disorder and an "incomplete tear of the right rotator cuff or rupture of the right shoulder, not specified as traumatic." The claimant was scheduled to see an orthopedist on January 26, 2017.

8. The claimant was seen by Dr. Jin for follow-up on February 8, 2017. The claimant reported constant neck pain radiating into the right shoulder and arm. The claimant also complained of leg numbness but denied any lower back pain. Physical therapy was beneficial but had not resolved the claimant's symptoms. The claimant was taking Tramadol as needed. The claimant had tried modified duty work but was recently taken off work by Med-Express following a diagnosis of pneumonia and a seven-day hospital stay. The claimant had not returned to work. Physical examination revealed significant tenderness in the cervical spine. There were no muscle spasms palpated or observed. Cervical range of motion was reduced. Neurological examination was non-focal. Dr. Jin diagnosed the claimant with a cervical sprain, cervical radicular pain, and neck pain. At the claimant's request, Dr. Jin referred the claimant to a doctor at the spine center for a second opinion. The claimant was to continue with physical therapy and modified duty work. Dr. Jin noted the claimant might not be able to work in an underground coal mine because of his multiple medical and health issues. The claimant was advised to consider a change in vocation if he wanted to continue working.

9. The claimant was seen by Dr. Jin for follow-up on March 6, 2017 and April 10, 2017. The claimant's neck pain had become more intense. He complained of constant neck pain radiating into the right shoulder and arm and intermittent numbness and tingling in the right arm and fingers. He reported a few episodes of neck pain radiating down the left arm. The claimant was having difficulty sleeping through the night. He was also working the night shift which had exacerbated his sleep problems. The claimant reported dozing off while at work and while driving.

The claimant was referred to a pain specialist to address his significant radicular complaints, and the pain specialist had recommended epidural steroid injections. Dr. France had recently reviewed the claimant's imaging studies and

opined that surgery was not indicated for the cervical spine. A recent IME evaluator had recommended right shoulder surgery. The claimant continued with physical therapy but reported very limited benefit.

Physical examination revealed decreased range of motion in the cervical spine. There was no evidence of muscle spasm in the cervical spine. Neurological examination was normal. Dr. Jin took the claimant off work to adjust his sleep cycle. Dr. Jin was concerned about the claimant's safety while driving. Tramadol was discontinued, and the claimant was given a prescription for Diclofenac and Elavil. The claimant was to complete physical therapy and follow-up with the pain clinic for injections. The claimant was advised to consider changing professions. Dr. Jin opined that the claimant might not be able to return to underground coal mining due to his neck problems.

10. The claimant followed-up with Dr. Jin on May 8, 2017. The claimant was scheduled to undergo shoulder surgery on May 10, 2017. The claimant reported slight improvement in his right arm pain following an injection. He reported neck pain radiating to the right upper arm with numbness in the right arm. Physical examination of the claimant's neck revealed decreased range of motion. The claimant reported palpable tenderness in the lower cervical spine. There was mild discomfort in the posterior area of the right shoulder. Impingement examination of the right shoulder was unremarkable. Range of motion of the right shoulder was within normal limits. Neurological examination was normal. Dr. Jin recommended the claimant follow-up with Dr. Bal for his shoulder problems and with the pain clinic for his neck pain. Dr. Jin informed the claimant that he had nothing more to offer him from a medical treatment standpoint. The claimant was instructed to return as needed. Dr. Jin opined that the claimant was probably at maximum medical improvement (MMI) in regard to his cervical strain.

11. The claimant was evaluated and treated by Dr. Richard Vaglianti at the WVU Pain Center on April 3, 2017, for complaints of chronic neck pain. Physical examination of the cervical spine revealed normal range of motion and no evidence of edema, tenderness, or deformity. Neurological examination was normal. Dr. Vaglianti diagnosed the claimant with cervical radicular pain. The claimant was given a cervical epidural steroid injection.

12. The claimant returned to Dr. Vaglianti for treatment on June 20, 2017. The claimant was given a cervical facet injection and right cervical medial branch blocks for complaints of neck pain, tingling in the extremities, and cervical facet arthropathy.

13. The claimant was seen by Dr. Jin for follow-up on September 12, 2017. The claimant had undergone right shoulder surgery and was participating in physical therapy. The claimant had not received any additional treatment for his neck other than an injection. The claimant continued to complain of constant

neck pain with radiation to the right arm and right arm numbness. The claimant also reported occasional pain radiating to the left shoulder. Physical examination of the cervical spine revealed decreased range of motion. There was no palpable tenderness in the cervical spine. There was mild discomfort in the AC joint of the right shoulder. Impingement examination of the right shoulder was unremarkable and right shoulder range of motion was within normal limits. Neurological examination was normal. Dr. Jin diagnosed the claimant with a cervical strain, neck pain, and a right rotator cuff tear. Dr. Jin prescribed Gabapentin. She found the claimant to be at MMI and opined that additional treatment was unlikely to change the claimant's condition. She opined that the claimant was unable to work as a coal miner. The claimant indicated his intention to apply for Social Security Disability Benefits.

14. The claimant was seen by Dr. Jin for follow-up on October 10, 2017. The claimant had completed physical therapy on his right shoulder and had received no additional treatment for his neck other than an injection. The claimant reported constant neck pain radiating to the right arm with occasional radiation of pain to the left shoulder. The claimant also continued to have numbness in his right arm. The claimant was taken Neurontin and Aleve. The claimant was recently evaluated by an independent evaluator who found the claimant to be at MMI. Physical examination of the claimant's neck revealed full range of motion of the cervical spine. There was no palpable tenderness in the neck. Neurological examination was normal. Dr. Jin concluded that the claimant was at MMI. She indicated the claimant was unable to work as a coal miner and was going to apply for Social Security Disability.

15. The claimant returned to Dr. Vaglienti for treatment on January 17, 2018. According to Dr. Vaglienti's records, the claimant was given trigger point injections with ultrasound for treatment of bilateral C6 and C7 radiculopathy, right shoulder pain, neck pain, and myofascial muscle pain.

16. The record contains an MRI report of the claimant's cervical spine dated February 1, 2018. The MRI revealed advanced osteoarthritis at C5-6 with spinal canal and foraminal narrowing and a C4-5 disc herniation with associated endplate osteophytes.

17. The claimant was seen by Dr. Vaglienti for treatment on February 6, 2018. The claimant reported 5% to 10% relief following cervical epidural steroid injections on May 2, 2017. He reported no relief following cervical medial branch blocks on June 20, 2017. He reported 40% relief with trigger point injections on January 17, 2018. The claimant complained of constant bilateral cervical spine pain with radiation to the right arm, right thumb, and right first finger. He also complained of pain radiating from the cervical spine to the left medial arm and the last two fingers on the palm and dorsal side of the left hand. The claimant had tried and failed conservative treatment consisting of physical therapy, TENS unit, Acetaminophen, Gabapentin, and muscle relaxers. Neurological

examination revealed no abnormalities. Dr. Vaglienti recommended cervical epidural steroid injections, a referral to the spine center, and medication for the following diagnoses: neck pain, C6 radiculopathy, right arm pain, cervical spinal stenosis, facet arthropathy, cervical spondylosis with myelopathy and radiculopathy, and degenerative disc disease.

18. The record indicates that Dr. Vaglienti administered a C5-6 transforaminal epidural cervical/thoracic steroid injection to the claimant on February 15, 2018, for treatment of the following diagnoses: neck pain, degenerative disc disease of the cervical spine, cervical spondylosis with myelopathy and radiculopathy, facet arthropathy, cervical spinal stenosis, right arm pain, and C6 radiculopathy.

19. The record contains a letter from Dr. Vaglienti dated March 16, 2018. Dr. Vaglienti opined to a reasonable degree of medical certainty that the claimant's neck and arm pain was directly related to his compensable work injury on November 14, 2016. He further stated that it was highly likely that the herniated disc in the claimant's cervical spine was causally related to the compensable injury. He opined that his recommended treatment plan was reasonable and necessary for treatment of the compensable work injury. He also noted that the claimant was scheduled to see a spine surgeon to determine whether surgery would improve his symptoms. Dr. Vaglienti did not believe the claimant had reached MMI in regard to his compensable injury, and he did not believe it was safe for the claimant to return to coal mining.

20. The record contains an affidavit from the claimant dated March 19, 2018. The claimant stated that he is 49-years old and has worked as a coal miner for approximately 10 years. On November 14, 2016, the claimant sustained injuries while operating a shuttle car. The claimant was thrown upward and struck his head on a shuttle car canopy. Following the incident, the claimant developed chronic neck pain with radiation of pain down both arms. The claimant also injured his right upper arm and right shoulder as a result of the November 14, 2016 incident and was later diagnosed with a tear in his right bicep. The claimant's bicep was operated on by Dr. Bal. The claimant denied any problems with his neck, right arm, or right shoulder prior to the work incident of November 14, 2016. Following the November 14, 2016 injury, the claimant was initially treated at Med-Express with muscle relaxers. The claimant was placed on restricted duty and returned to work as a fire boss. The fire boss work was difficult and painful for the claimant to perform. The claimant came under the care of Dr. Chuanfang Jin. The claimant did not choose Dr. Jin as his doctor, and he was unsure how Dr. Jin became his doctor. Dr. Jin took the claimant off work and referred him to Dr. Richard Vaglienti at the Pain Center. The claimant continued to treat with Dr. Vaglienti. Dr. Vaglienti believed that the claimant's neck and right arm pain were caused by the work injury of November 14, 2016. Dr. Vaglienti also believed the herniated disc in the claimant's neck was likely caused by the work injury. The claimant was treated by Dr. Vaglienti with

injections, and the injections seemed to reduce the claimant's neck and related pain. Workers' compensation had refused to cover Dr. Vaglianti's treatment requests, forcing the claimant to seek treatment with the Pain Center using his own health insurance and personal funds. Dr. Vaglianti believed the claimant was a candidate for cervical surgery and had not reached MMI. The claimant had no source of income after his temporary total disability benefits were cut off. The claimant requested that his TTD benefits be restored and paid back to the time they were cut off.

21. The record contains an affidavit from Nathan Moore dated March 19, 2018. Nathan Moore is the claimant's son. Nathan Moore accompanied his father to a second evaluation with Dr. Hennessey. Using his cell phone, Mr. Moore timed the claimant's second evaluation with Dr. Hennessey. Mr. Moore stated that the claimant's second evaluation with Dr. Hennessey lasted five minutes.

22. Judicial notice is taken of the Office of Judges' Decision of May 22, 2018. That Decision affirmed the Claim Administrator's Orders of September 15, 2017, and October 19, 2017, which denied medical treatment and closed the claim for temporary total disability (TTD) benefits. In regard to the closure of TTD, the Administrative Law Judge (ALJ) found that the weight of the evidence established that the claimant had reached MMI in regard to his compensable conditions and was no longer temporarily and totally disabled. In regard to the treatment issue, the ALJ found that the requested treatment was not medically necessary or reasonably related to a compensable condition in the claim.

23. Judicial notice is taken of the Office of Judges' Decision of September 26, 2018. That Decision affirmed the Claim Administrator's Order of December 7, 2017, which denied further evaluation with Dr. Vaglianti. The ALJ concluded that the record indicated that Dr. Vaglianti's treatment of the claimant was directed at a variety of non-compensable conditions.

24. The employer submitted a closing argument dated August 7, 2018. The employer argued that a preponderance of the evidence establishes that the claimant has reached MMI and has no impairment related to the compensable injury. The employer further argued that any continuing disability that the claimant may have is due to a variety of non-compensable conditions. The employer asked that the Order of September 26, 2017, be affirmed.

DISCUSSION:

W. Va. Code §23-4-1g provides that, for all awards made on and after July 1, 2003, the resolution of any issue shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance,

credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting

This claim is before the Office of Judges on the claimant's protest to the Order of September 26, 2017, which granted the claimant a 0% permanent partial disability (PPD) award based upon the IME report of Dr. Hennessey. The issue is the amount of claimant's permanent partial disability. This award is for residual disability, which will remain with the claimant after his or her recovery. It is referred to as "partial" because, even though it may affect an individual's ability to work and enjoy life, the individual is not totally disabled because of it.

If a party protests the Order pertaining to an award, the parties have an opportunity to present evidence concerning the claimant's disability. Evidence of permanent partial disability in the form of testimony and reports by physicians and other experts may be submitted. The fact that a particular expert may find a certain percentage of permanent partial disability does not mean the Office of Judges is required to accept it. All reliable, probative and substantial evidence will be weighed and considered in determining if the permanent partial disability awarded is correct.

For injuries occurring after May 12, 1995, under W. Va. Code § 23-4-6 and W.Va. C.S.R. § 85-20-1, *et seq.*, permanent partial disability awards are based on medical impairment. The Commission has adopted the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition, as the measure of whole body medical impairment. In cases where the examination upon which the award was based was conducted on or after June 14, 2004, range of impairment limitations, as set forth in W.Va. C.S.R. § 85-20-1, *et seq.*, apply to some types of injuries.

The weight of the evidence establishes that the claimant has reached maximum medical improvement in regard to his compensable conditions. The claimant's treating physician, Dr. Jin, found the claimant to be at MMI and in need of no further treatment for his compensable conditions. In support of his protest, the claimant relies upon the medical records of his treating pain management specialist, Dr. Vaglienti. Although Dr. Vaglienti opined that the claimant is not at MMI and requires additional treatment, his opinion fail to rebut Dr. Jin's finding that the claimant is at MMI in regard to his compensable conditions. Specifically, Dr. Vaglienti's records indicate that the claimant remains disabled and requires additional treatment due to a variety of non-compensable conditions, including radiculopathy, cervical spinal stenosis, facet arthropathy, cervical spondylosis, and degenerative disc disease. In that regard, the record contains no medical evidence to rebut Dr. Jin's finding that the claimant has reached MMI in regard to his compensable conditions.

In terms of Impairment, the claimant has not submitted any medical evidence showing that he has more than 0% whole person impairment for his compensable injuries according to the Fourth Edition of the AMA Guides to the Evaluation of Permanent Impairment and the permanent partial disability provisions of W.Va. C.S.R. § 85-20-1, *et seq.* Therefore, based upon the evidence of record, it must be found that the claimant has failed to show by a preponderance of evidence that he has more than 0% PPD in this claim.

The weight of the evidence establishes that the claimant is at MMI in regard to his compensable conditions. Additionally, the claimant has failed to demonstrate by a preponderance of evidence that he has any ratable whole person impairment resulting from his compensable conditions. Accordingly, the Order of September 26, 2017, must be affirmed.

CONCLUSIONS OF LAW:

The weight of the evidence indicates the claimant is at MMI in regard to his compensable conditions, and the claimant has failed to demonstrate by a preponderance of evidence that he has more than 0% whole person impairment due to his compensable conditions.

Accordingly, it is hereby ORDERED that the Claims Administrator's Orders of September 26, 2017, be AFFIRMED.


James Moore

JCN: 2017012631

APPEAL RIGHTS:

Under the provisions of W.Va. Code §23-5-12, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. The appeal shall be filed with the Office of Judges who will convey said filing to the Workers' Compensation Board of Review.

Date: November 26, 2018


Scott Nuckles
Administrative Law Judge

SN:kc:lkc

cc: JAMES MOORE
ALLAN NORMAN KARLIN - COUNSEL FOR CLAIMANT
ARCH COAL, INC
JEFFREY B BRANNON - COUNSEL FOR EMPLOYER
AIG CLAIMS INC

JCN: 2017012631
Date: November 26, 2018

Record Considered

Issue:

The Claimant's protest to the Claims Administrator's order of September 26, 2017, regarding PERMANENT PARTIAL AWARD.

EVIDENCE SUBMITTED:

Claimant Evidence

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 4/2/2018
Author: Workers Compensation Duty Form-11/17/16-12/5/16

Document Type: Not Specified
Document Date: 11/17/2016
Submit Date: 4/2/2018
Author: MedExpress Records 11/17/16 to 1/16/17

Document Type: Not Specified
Document Date: 12/3/2016
Submit Date: 4/2/2018
Author: Monongalia General Hospital/MRI

Document Type: Not Specified
Document Date: 12/9/2016
Submit Date: 4/2/2018
Author: PRO PT/PT Initial Exam

James Moore

JCN: 2017012631

Document Type: Not Specified
Document Date: 1/5/2017
Submit Date: 4/2/2018
Author: WVU Medicine Chuanfang Jin MD 1/5/17 to 10/10/17

Document Type: Not Specified
Document Date: 4/3/2017
Submit Date: 4/2/2018
Author: WVU Pain Center Records 4/3/17 and 6/20/17

Document Type: Not Specified
Document Date: 1/17/2018
Submit Date: 4/2/2018
Author: Richard Vaglianti MD

Document Type: Not Specified
Document Date: 1/17/2018
Submit Date: 4/2/2018
Author: Richard Vaglianti MD 1/17/18-2/15/18

Document Type: Not Specified
Document Date: 1/31/2018
Submit Date: 4/2/2018
Author: Allan Karlin & Assoc./MRI Report Cervical Spine

Document Type: Not Specified
Document Date: 2/1/2018
Submit Date: 4/2/2018
Author: MRI Spine Cervical

Document Type: Not Specified
Document Date: 3/16/2018
Submit Date: 4/2/2018
Author: Richard Vaglianti MD

Document Type: Not Specified
Document Date: 3/19/2018
Submit Date: 4/2/2018
Author: Affidavit/James Moore Jr.

Document Type: Not Specified
Document Date: 3/19/2018
Submit Date: 4/2/2018
Author: Affidavit/Nathan Moore

CLOSING ARGUMENTS:

James Moore

JCN: 2017012631

Party Submitted: Employer
Letter Date: 8/7/2018

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF REVIEW**

JAMES MOORE,
Appellant

v.

ARCH COAL, INC,
Appellee

DEC 16 2019

Appeal No. 2053723
JCN: 2017012631
DOI 11/14/2016

ORDER

The following case is an appeal by the claimant from a final order of the Workers' Compensation Office of Judges dated November 26, 2018, which affirmed the claims administrator's order dated September 26, 2017.

The Workers' Compensation Board of Review has completed a thorough review of the record, briefs, and arguments. As required, the Workers' Compensation Board of Review has evaluated the decision of the Office of Judges in light of the standard of review contained in West Virginia Code § 23-5-12, as well as the applicable statutory language as interpreted by the West Virginia Supreme Court of Appeals.

Upon our review of this case, we have determined to affirm the decision of the Office of Judges. The Board adopts the findings of fact and conclusions of law of the Administrative Law Judge's Decision dated November 26, 2018, which relate to the issue on appeal, and the same are incorporated herein by reference, made a part hereof, and are ratified, confirmed and approved with the following modifications:

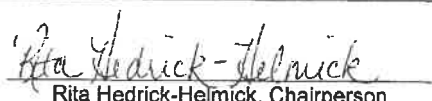
1. In Findings of Fact Nos. 1, 3 and 7, the evidence is located in the electronic claim file under the date of November 17, 2016.

2. In Findings of Fact Nos. 8, 9, 10, 13 and 14, the evidence is under the date of January 5, 2017.
3. In Finding of Fact No. 12, the evidence is under the date of April 3, 2017.
4. In Findings of Fact Nos. 17 and 18, the evidence is under the date of January 17, 2018.

Accordingly, it is ORDERED that the final order of the Workers' Compensation Office of Judges dated November 26, 2018, is hereby AFFIRMED.

From any final decision of the Board, including any order of remand, an application for review may be prosecuted by any party to the Supreme Court of Appeals within thirty days from the date of this order. The appeal shall be filed with Edythe Nash Gaiser, Clerk of the West Virginia Supreme Court of Appeals, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

DATED: DECEMBER 13, 2019

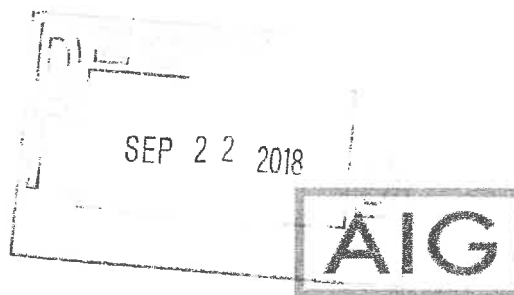

Rita Hedrick-Helmick, Chairperson

cc: JAMES MOORE
ALLAN N. KARLIN
ARCH COAL, INC
JEFFREY B. BRANNON
AIG CLAIMS, INC.

AIG CLAIMS, INC.

Workers' Compensation Division

P.O. Box 25908
Shawnee Mission, KS 66225
(800) 428-2422
(all other) Fax (866)-958-1211
(new losses) Fax (866) 420-1404



September 17, 2018

JAMES MOORE
37 MONTGOMERY LANE
MASONTOWN, WV 26542

RE:	Insured:	ARCH COAL INC
	Carrier:	NEW HAMPSHIRE INSURANCE CO
	Claim Number:	555-224351
	Policy No:	019177708
	Date of Loss:	11/14/2016
	Claimant:	JAMES MOORE

REQUEST FOR REOPENING OF TEMPORARY TOTAL DISABILITY BENEFITS- DENIED

Dear Mr. Moore:

AIG has received a request for reopening for Temporary Total Disability (TTD) benefits under the above workers' compensation claim. This request has been reviewed and the decision has been made that we will not authorize additional TTD benefits to be paid under this claim. This decision is denied based on :

The reason for ongoing disability is unrelated to the compensable work injury of date 11/14/2016, furthermore, the opinion has been provided of IME physician that you are capable of working at a full duty capacity for your work injury.

The claimant may protest this decision within sixty (60) days from receipt. **If you desire to protest this decision, you must send a written protest letter with a copy of the decision to the Office of Judges, PO Box 2233, Charleston, WV 25328-2233. A copy of your protest must be sent to AIG and all other parties to the claim.**

Sincerely,

DANNIELL CASE
SR. CLAIM REPRESENTATIVE
067-LOUISVILLE
(502) 561-8783

cc: ICG TYGART VALLEY, LLC
ALLAN N. KARLIN & ASSOCIATES
CIPRIANI & WERNER
DR. JOHN FRANCE

A-0062