

**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:

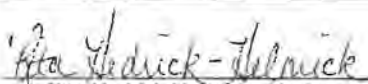
1. In Findings of Fact Nos. 1, 3, and 9, the evidence is located in the electronic claim file under the date of November 17, 2016.
2. In Findings of Fact Nos. 10 and 12, the evidence is under January 5, 2017.
3. In Findings of Fact Nos. 14 and 15, the evidence is under April 3, 2017.
4. In Finding of 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.