

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**JAMES B. MANES,
Claimant Below, Appellant**

**vs.) No. 35729 (BOR Appeal No. 2043625)
(Claim No. 2004042446)**

FILED

June 21, 2011

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**WEST VIRGINIA OFFICE INSURANCE
COMMISSION and MINGO-LOGAN
COAL COMPANY, Appellees**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review order dated April 21, 2010. By that order, the Board reversed and vacated the Office of Judge's September 11, 2009, order and reinstated the Claims Administrator's March 11, 2009, order. The effect of the Board's action was to reinstate the previous denial of authorization for a left knee medial meniscectomy. The appeal was timely filed by the claimant, who requests that this Court reverse the Board's decision and authorize a left knee medial meniscectomy.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. Having considered the parties' submissions and the relevant decisions of the lower tribunals, this Court is of the opinion that the decisional process would not be significantly aided by oral argument. Further, this case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Factually, this case arose in 2003, when the claimant sustained an injury to his left knee and hip as a result of a fall. The compensability of the claim was originally questioned, but eventually was found to be compensable. The issue presently before this Court is whether the claimant's request for a left knee medial meniscectomy should be authorized.

The claimant's request is based on the report of Dr. Padmanaban, who stated that a 2007 MRI showed a medial meniscus tear and a cyst. The doctor's report further states that the tear is probably from the compensable injury and recommended arthroscopic surgery and a meniscectomy. Conversely, Dr. Jin noted that a 2004 x-ray and a 2004 MRI showed minimal degenerative changes of the left hip and no significant abnormalities of the left knee.

Therefore, Dr. Jin concluded that the normal scans of 2004 illustrate that the damage seen on the 2007 MRI cannot be attributed to the 2003 work-related injury.

Based on this competing evidence, the Claims Administrator denied the claimant's request for a left knee meniscectomy, finding that the current condition was unrelated to the compensable injury. The OOI, however, reversed the claims administrator. The OOI found that the report from Dr. Padmanaban, which found a causal connection between the current tear and the 2003 injury, establishes that this is an extraordinary case such that treatment outside of the guidelines is allowed. The OOI recognized and did not discount Dr. Jin's disagreement with Dr. Padmanaban; however, the OOI chose to accept Dr. Padmanaban's report despite the intervening normal tests conducted in 2004. Thus, the OOI reversed the Claims Administrator and, instead, authorized a medial meniscectomy. On appeal to the Board, the OOI was reversed and the Claims Administrator's denial of the requested treatment was reinstated. The Board relied on Dr. Jin's report, which specifically found Dr. Padmanaban's report to be "obviously incorrect" in regards to whether the current tear can be attributed to the 2003 injury. Dr. Jin found that it cannot be related, thus, providing the Board's reason for denying the requested medical treatment. The claimant then appealed to this Court.

After carefully reviewing the parties' briefs, the evidence of record, and the applicable law, this Court finds that the Board's order dated April 21, 2010, was not clearly wrong. Pursuant to W. Va. Code 23-5-15(d) (2005) (Repl. Vol. 2010),

[i]f the decision of the board effectively represents a reversal of a prior ruling of either the commission or the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo re-weighing of the evidentiary record.

While medical evidence was submitted that shows a meniscus tear in the claimant's knee, it has not been reliably linked to the 2003 work-related injury. Subsequent to the 2003 injury, in 2004, the probative tests revealed no tear. As explained by Dr. Jin, a meniscal tear as a result of an injury would have been seen in the 2004 studies and are not latent in form. Dr. Padmanaban's opinion that the tear was causally-connected to the 2003 injury was simply because "there had been no other report of an [intervening] injury." Such lack of evidence

is insufficient to link a tear in 2007 with an injury sustained in 2003, especially under the circumstances presented herein where an intervening test in 2004 showed no such tear. It cannot be said that the Board's decision was clearly wrong in denying the requested left knee medial meniscectomy. Based on the foregoing reasons, the decision of the Board of Review dated April 21, 2010, is affirmed.

Affirmed.

ISSUED: June 21, 2011

CONCURRED IN BY:

Chief Justice Workman

Justice Davis

Justice Benjamin

Justice Ketchum

Justice McHugh