

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

**JONATHAN E. MARSHALL**  
**Claimant Below, Appellant**

**vs.) No. 35752 (BOR Appeal No. 2043064)**  
**(Claim No. 2006035679)**

**WEST VIRGINIA OFFICE INSURANCE  
COMMISSION and JAN-CARE AMBULANCE  
OF RALEIGH COUNTY, INC., Appellees**

**FILED**

**May 16, 2011**

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

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review order dated November 18, 2009, in which the Board reversed the Workers' Compensation Office of Judges' order which had added the diagnosis of thoracic strain diagnosis code 847.1 as a compensable component in this claim. In its order, the Board reinstated the Claims Administrator's order that denied the request to add thoracic diagnosis code 847.1 as a compensable code in this claim. The appeal was timely filed by the claimant. The claimant requests that this Court grant his Petition for Appeal, reverse the Board's November 18, 2009, order, and reinstate the Office of Judges' order of April 14, 2009, which added the diagnosis code 847.1, thoracic strain, as a compensable condition.

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 decision of the lower tribunal, this Court is of the opinion that the decisional process would not be significantly aided by oral argument. 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.

The Appellant, employed as an EMT for an ambulance company, suffered an injury to his back on March 28, 2006, while transporting a patient on a stretcher down a flight of stairs. The Appellant filed an application for workers' compensation benefits, and the claim was held compensable for diagnosis code 847.2 (sprain/strain lumbar region). Over one year after the initial injury, the claimant sought to include the compensable diagnosis of thoracic strain. The employer introduced evidence indicating that the claimant had injured his back in a March 5, 2007, separate incident while working for a different employer. Dr. Prasadara

Mukkamala, a physiatrist, reviewed the claimant's medical records and opined that the claimant did not injure his thoracic spine or mid-back as a part of the March 28, 2006, injury.

Introducing evidence in an attempt to demonstrate a causal connection between the March 28, 2006, injury and the ultimate thoracic sprain, Dr. Dominador Lao, the claimant's treating physician, indicated that the claimant suffered a thoracolumbar strain and sprain at the time of the injury. Dr. Lao further noted pain in the claimant's upper and lower back and left shoulder, with muscle spasms in the thoracic spine. Dr. Lao requested the addition of a thoracic sprain diagnosis as caused by the March 28, 2006, injury.

A March 11, 2007, MRI, interpreted by Dr. C. Richard Daniel, Jr., a radiologist, indicated as follows: "Small central syringomyelia area within the dorsal cord T3 through T12 without evidence of enhancing lesion. Left paracentral disk protrusion at T8-9. A right paracentral disk protrusion is present at T9-10, neither one appears to be causing significant impingement upon adjacent neural structures. MRI of the lumbar spine is within normal limits."

Additionally, the claimant testified that he has suffered symptoms in the mid-back between his shoulder blades since the injury of March 28, 2006. He stated that this pain began immediately after the March 28, 2006, injury.

The OOI found that sufficient evidence existed to warrant the addition of thoracic strain as a compensable component. The Board of Review reversed that determination, based upon the delay of over one year between the injury and the request for the additional diagnosis code, as well as the evidence of an additional aggravation of the injury during subsequent employment.

Subsequent to thorough review of the briefs of the parties and the evidence of record, this Court finds that the Board's order dated November 18, 2009, is clearly erroneous. The evidence demonstrates that the claimant's lumbar diagnosis code was insufficient and that an additional diagnosis of thoracic strain should be included. Dr. Lao, the treating physician, stated that thoracic strain should be included as a compensable condition and that such condition was caused by the March 28, 2006, incident and aggravated by the subsequent incident in which the claimant turned to leave a conversation with a co-worker. The initial medical records from the 2006 injury verify that the claimant was tender in the thoracic area after the initial injury, and the claimant's treating physician clearly explains that the thoracic region was injured in that 2006 incident. Moreover, the MRI indicated bulging at the thoracic areas. This Court has consistently held that "[a] claimant in a workmen's compensation case must bear the burden of proving his claim but in doing so it is not necessary to prove to the exclusion of all else the causal connection between the injury and

the employment.” Syl. Pt. 4, *Wilkinson v. West Virginia Office Ins. Comm’n*, 222 W. Va. 394, 664 S.E.2d 735 (2008) (internal citations omitted).

Accordingly, for the foregoing reasons, the decision of the Board of Review dated November 18, 2009, is reversed, and this matter is remanded to the Board of Review for entry of an order reinstating the Workers’ Compensation Office of Judges’ order dated April 14, 2009, which had added the diagnosis of thoracic strain diagnosis code 847.1 as a compensable component in this claim.

Reversed and remanded with directions.

**ISSUED:** May 16, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Thomas E. McHugh