

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

CHRISTOPHER E. SYLVA
Claimant Below, Petitioner

vs.) No. 35754 (BOR Appeal No. 2043550)
(Claim No. 2007002484)

FILED

June 22, 2011

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

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
and SUPERIOR PLATING, INC.,
Respondents**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated April 7, 2010, in which the Board affirmed, in part, and reversed, in part, a September 9, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 14, 2008, Order denying the inclusion of ICD9-CM diagnosis codes 841.9 (elbow strain) and 842.0 (wrist sprain); reversed the claims administrator's August 14, 2008, Order denying the inclusion of ICD9-CM diagnosis code 337.21 (reflex sympathetic dystrophy); reversed the claims administrator's August 12, 2008, Order closing the claim for consideration of disability benefits due to failure to present for examination by Dr. P. B. Mukkamala; reversed the claims administrator's September 16, 2008, and October 13, 2008, Orders closing the claim for payment of temporary total disability benefits; ordered that the claims administrator refer Mr. Sylva to a pain clinic/management specialist for determination as to whether Mr. Sylva has incurred reflex sympathetic dystrophy secondary to the injury of January 24, 2007; and further ordered that Mr. Sylva be granted temporary total disability benefits for a period of at least six months commencing July 23, 2008, the date of Mr. Sylva's initial examination by Dr. Cheryl Stockett, with temporary total disability benefits to continue as substantiated by appropriate medical evidence. The appeal was timely filed by the petitioner, and a response was filed by the employer. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the court determines that there is no prejudicial error. The 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 Board of Review reversed the September 9, 2009, Order of the Office of Judges insofar as it ordered the claims administrator to refer Mr. Sylva to a pain clinic/management specialist for a determination as to whether he has incurred reflex sympathetic dystrophy secondary to the injury of January 24, 2007, and granted temporary total disability benefits for a period of at least six months commencing July 23, 2008, and continuing as substantiated by appropriate medical evidence. The Board of Review reinstated the August 14, 2008, Order of the claims administrator denying the addition of diagnosis code 337.21 (reflex sympathetic dystrophy) as a compensable component of the claim; reinstated the August 12, 2008, Order of the claims administrator closing the claim for further disability benefits; and reinstated the claims administrator's Orders of September 18, 2008, and October 13, 2008, closing the claim on a temporary total disability basis. The remaining provisions of the September 9, 2009, Order of the Office of Judges were affirmed.

Mr. Sylva contends that reflex sympathetic dystrophy should be added as a compensable component of his claim based upon the reports of Dr. Jack Koay and Dr. Cheryl Stockett. He also asserts that he is entitled to additional temporary total disability benefits. Mr. Sylva, a sales representative and delivery truck driver, reported that he suffered an injury to his wrists, hands, thumbs, fingers, elbows, and shoulder over a period of approximately ten months. On February 12, 2007, his claim was held compensable for carpal tunnel syndrome. Mr. Sylva had filed a prior claim for injuries to his wrist, elbow, and neck which occurred when he pulled an object from the bed of a truck on March 7, 2006. In reversing the Office of Judges and denying the request to add reflex sympathetic dystrophy as a compensable diagnosis, the Board of Review explained that Mr. Sylva had been referred to Dr. Richard Vaglianti, a pain management specialist for evaluation, after Dr. Koay, who examined Mr. Sylva on behalf of the claims administrator on two occasions, had reported that Mr. Sylva might have reflex sympathetic dystrophy. (April 7, 2010, Board of Review Order, p. 4). Dr. Vaglianti indicated that he found no signs or symptoms of reflex sympathetic dystrophy. *Id.* The Board of Review also pointed out that Mr. Sylva's treating physician, Dr. James Woodford, had reported that there is no evidence of reflex sympathetic dystrophy and that Mr. Sylva could return to work on at least a limited duty basis. *Id.* at 3. While Dr. Stockett later requested that the claim be held compensable for reflex sympathetic dystrophy, she acknowledged during deposition testimony that reflex sympathetic dystrophy was not a diagnosis that she routinely made; that the diagnosis was more of a pain management

speciality; and that she had not seen Dr. Vaglianti's report. *Id.* Finally, the Board of Review noted that "Dr. Jack Riggs, a neurologist, reviewed the claimant's medical records and found on March 6, 2009, that if the claimant had developed reflex sympathetic dystrophy as a result of either the March 7, 2006, injury, the left carpal tunnel syndrome, or the left carpal tunnel syndrome release surgery, it would have manifested long before Dr. Koay's suspicion on March 17, 2008." *Id.* Consequently, the Board of Review concluded that reflex sympathetic dystrophy was not causally related to the compensable injury and that the claim was properly closed for further benefits. Accordingly, the relevant decisions of the claims administrator were reinstated. It is noted that while one of the orders entered by the claims administrator closed the claim for further disability benefits because Mr. Sylva missed an appointment with Dr. Mukkamala, ultimately the decision to deny further benefits was based upon the fact that a diagnosis of reflex sympathetic dystrophy could not be made.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provisions, clearly the result of erroneous conclusions of law, or 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. Therefore, the denial of Mr. Sylva's request to add diagnosis code 337.21 (reflex sympathetic dystrophy) and grant additional temporary total disability benefits is affirmed.

Affirmed.

ISSUED: June 22, 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