

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Harrison County Coal Resources, Inc.,
Employer Below, Petitioner

vs.) **No. 22-0208** (BOR Appeal No. 2057290)
(JCN: 2021004016)

James Burgoyne,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Harrison County Coal Resources appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent James Burgoyne filed a timely response.¹ The issues on appeal are whether the treatment requested by Mr. Burgoyne is medically related and reasonably required to treat his compensable condition and whether the claim was properly closed for temporary total disability benefits. The claimant protested three separate orders of the claims administrator dated February 5, 2021; February 9, 2021; and March 16, 2021. The first two orders denied authorization for treatment and the third order closed the claim for temporary total disability benefits. The Workers' Compensation Office of Judges ("Office of Judges") reversed the claims administrator's February 5, 2021, decision and authorized physical therapy for the claimant as requested by his treating physician. The Office of Judges also reversed the claims administrator's order dated February 9, 2021, and authorized a referral for an evaluation at West Virginia University's Pain Clinic. Finally, the Office of Judges reversed the claims administrator's March 16, 2021, order, and the claim was reopened for temporary total disability benefits for the period from February 2, 2021, through May 6, 2021. The decision was affirmed by the Board of Review on February 17, 2022. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Mr. Burgoyne, a coal miner employed at Harrison County Coal Resources, Inc., presented to MedExpress Fairmont on August 31, 2020, complaining of an injury to his right shoulder and neck. He reported that he had been driving a dump truck at work on April 29, 2020, when he hit a hole and was jerked around inside the cab. The claimant reported mild to moderate shoulder pain and posterior neck pain, which he described as mild to moderate, aching, and intermittent. Although he continued working during the three months since the date of injury, a physical

¹Petitioner is represented by Aimee M. Stern, and the respondent is represented by J. Thomas Greene Jr. and T. Colin Greene.

examination conducted by Ciriaco Mendoza, M.D., revealed posterior neck pain with slight tenderness aggravated with movement. X-ray imaging taken on August 31, 2020, indicated no acute cervical spine abnormalities or bilateral shoulder fractures. On September 10, 2020, the claims administrator held Mr. Burgoyne's claim compensable for the covered conditions of unspecified sprain of unspecified shoulder joint, S43.409, and sprain of joints and ligaments of unspecified parts of the neck, S13.9.

The claimant was referred to Derik Geist, M.D., an orthopedic surgeon, on September 25, 2020, and Mr. Burgoyne was diagnosed with neck pain, along with right arm radicular symptoms. Physical therapy was recommended, and the claimant began treatment at Mountain State Physical Therapy on October 13, 2020. The therapist recommended therapy three times per week for eight weeks. Mr. Burgoyne then began treating with J. David Lynch, M.D., a physical medicine and rehabilitation specialist, on October 28, 2020. Dr. Lynch noted that Mr. Burgoyne's cervical spine x-ray showed a mild reversal of cervical lordosis, some mild degenerative disc disease, and no instability. On examination, Dr. Lynch found strength of the upper and lower extremities to be 5/5, reflexes to be 1-2/4, functional range of motion of the shoulders, and tenderness of the cervical spine across the paralumbar region. His diagnoses were cervical strain with some persistent neck pain and right arm symptoms that have improved. Dr. Lynch recommended a cervical spine MRI, and the claimant was to remain off work. An MRI interpreted by Francisco Casalduc, M.D., at the MRI Department at West Virginia University's Health Sciences Center on November 10, 2020, documented spondylotic changes, most notably at C5-6, where there was mild canal narrowing.

At Mr. Burgoyne's December 1, 2020, physical therapy appointment, he reported an improvement of his neck condition. He stated that the pain had mostly been in his neck, and he no longer had pain radiating to his arm and shoulder. He also reported that he no longer had frequent headaches, and when they did occur, the headaches were mild.

Although Mr. Burgoyne reported an improvement in some of his conditions, he still continued to complain of neck pain. David B. Cohen, M.D., at the WVU Department of Neurosurgery evaluated the claimant on December 3, 2020, and diagnosed mild degeneration of the cervical intervertebral disc and neck pain. Dr. Cohen opined that Mr. Burgoyne was not a candidate for surgery and that the patient should follow-up with Dr. Lynch. On December 23, 2020, Mr. Burgoyne returned to Dr. Lynch with continued complains of neck pain. Dr. Lynch noted that his MRI documented mild degenerative disc disease and that Dr. Cohen concluded Mr. Burgoyne was not a surgical candidate. On examination, Dr. Lynch found tenderness to palpation of the posterior cervical spine. His diagnosis remained cervical strain, and he recommended continued physical therapy.

After beginning a second course of physical therapy on January 12, 2021, Mr. Burgoyne followed-up with Dr. Lynch on January 13, 2021, and reported that his neck pain had somewhat improved. He indicated that the pain continued to occasionally radiate down his bilateral arms, greater on the right than on the left. On examination, Dr. Lynch found tenderness to palpation of the cervical spine and recommended a pain clinic consultation. A request for authorization for additional physical therapy was submitted on January 22, 2021.

Mr. Burgoyne underwent an independent medical evaluation with Prasadarao Mukkamala, M.D., on February 2, 2021. After conducting range of motion testing of the claimant's cervical spine, Dr. Mukkamala opined that, with the exception of the right shoulder, the range of motion was normal for all joints in both upper extremities, including the left shoulder. Dr. Mukkamala's clinical examination of the right shoulder was unremarkable with no deformity, crepitus, or instability. Mr. Burgoyne was found to be at maximum medical improvement, and he was diagnosed with cervical sprain and right shoulder sprain. Dr. Mukkamala further opined that Mr. Burgoyne did not require any additional diagnostic studies or treatment and that there was no indication for a referral to the pain clinic, as he should continue with an at-home exercise program. It was found that the claimant's compensable injury precluded him from returning to work. Using the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) ("AMA Guides"), Dr. Mukkamala found 4% whole person impairment for range of motion deficits and reasoned that since Mr. Burgoyne received a 4% award for a prior injury to the right shoulder, he remained fully compensated with no permanent impairment for the right shoulder injury of April 29, 2020. Regarding the claimant's neck and cervical spine, Dr. Mukkamala found 12% whole person impairment for loss of range of motion, but no impairment related to motor or sensory deficits, and no permanent neurological impairment. Mr. Burgoyne was placed in category IIB from Table 75 of the AMA Guides, for 4% whole person impairment. Dr. Mukkamala combined the 12% impairment for loss of range of motion and 4% impairment from Table 75, for 16% whole person impairment. However, per the table in West Virginia Code of State Rules § 85-20-E, Dr. Mukkamala's rating of 16% whole person impairment was outside of the acceptable range in Cervical Category II, which was limited by the range in Appendix E., so Dr. Mukkamala adjusted the rating to 8% whole person impairment. Based upon Dr. Mukkamala's apportionment, the 8% rating was adjusted to 4% impairment due to preexisting degenerative spondyloarthropathy.

On February 5, 2021, the claims administrator denied Dr. Lynch's January 22, 2021, request for physical therapy based upon Dr. Mukkamala's finding that Mr. Burgoyne reached his maximum degree of medical improvement. Dr. Lynch's request for authorization for referral to the WVU Pain Clinic was denied in a claims administrator's order dated February 9, 2021, also based upon Dr. Mukkamala's opinion that there is no need for additional treatment in the claim. The claimant returned to Dr. Lynch on February 10, 2021. Mr. Burgoyne reported that his neck pain was a little better, but he occasionally experienced radiating pain down both arms. Dr. Lynch reported that the claimant felt that he was unable to work. However, on March 16, 2021, the claims administrator closed Mr. Burgoyne's claim for temporary total disability benefits. Mr. Burgoyne timely protested each of the claims administrator's orders and litigation before the Office of Judges ensued.

On April 15, 2021, Mr. Burgoyne testified at a deposition that on April 29, 2020, he hit a large hole that developed in the road as a result of rain. He was badly jarred and had to stop to "get his bearings back." At the time, he could not tell whether the pain was in his shoulder, neck, or back. Although he reported the accident, he took ibuprofen and continued to work until the pain got progressively worse. Mr. Burgoyne testified that he eventually began seeing Dr. Lynch in October of 2020, and Dr. Lynch recommended physical therapy. Mr. Burgoyne stated that physical therapy was helping, and he was almost back to his previous level of strength and mobility until

his treatment stopped following Dr. Mukkamala's finding of maximum medical improvement. The claimant stated that his condition has regressed, and he was losing the progress that he gained from therapy. He continues to have neck pain, headaches, and range of motion issues.

Dr. Lynch testified in a deposition on May 6, 2021, that Mr. Burgoyne continued to need additional physical therapy to strengthen his neck and decrease pain. The WVU Pain Clinic also noted that he would benefit from injections to the spine, particularly into the facet joints in the cervical spine. Dr. Lynch stated that he had reviewed Dr. Mukkamala's report and disagreed with the finding of maximum medical improvement. Dr. Lynch was of the opinion that Mr. Burgoyne could still use additional therapy and a pain clinic consultation. Because the claimant still needed treatment, Dr. Lynch stated that he had not given him a full-duty release to return to work.

In a final decision dated August 17, 2021, the Office of Judges noted that the rationale provided by the claims administrator in all three orders dated February 5, 2021; February 9, 2021; and March 16, 2021, is that an independent medical evaluator concluded that Mr. Burgoyne reached his maximum degree of medical improvement. However, the Office of Judges concluded that both of the independent medical evaluators were sufficiently qualified, and Dr. Lynch had the advantage of seeing the claimant on multiple occasions to observe the progression of his condition. The evidence was found to be weighed evenly and was not in favor of either party. The Office of Judges found that the claimant carried his burden of proof, that Dr. Lynch's requests for a course of treatment should be authorized, and that a referral to a pain clinic and additional physical therapy should also be authorized. The Office of Judges further found that since Mr. Burgoyne has not been released to return to regular duty work by Dr. Lynch, he should be granted temporary total disability benefits for the period from February 2, 2021, through May 6, 2021, with an offset for any overlapping benefits and for such period of time as can be substantiated through the submission of credible medical evidence. As such, the three orders of the claims administrator were reversed. In an order dated February 17, 2022, the Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its decision.

This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision effectively represents a reversal of a prior ruling of either the Workers' Compensation Commission or the Office of Judges, we may reverse or modify that decision only if it 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. *See* W. Va. Code §§ 23-5-15(c) & (e). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. of Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

After review, we find that the reasoning and conclusions of the Office of Judges, as affirmed by the Board of Review, is not a clear violation of constitutional or statutory provisions, is not the result of erroneous conclusions of law, and is not clearly wrong. The Office of Judges found the evidence evenly weighted in the record and determined that the opinion of Dr. Lynch is more credible than that of Dr. Mukkamala, based upon Dr. Lynch's familiarity with Mr. Burgoyne's condition. "If, after weighing all of the evidence regarding an issue in which a claimant

has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted." W. Va. Code § 23-4-1g(a). We find that the Office of Judges did not err in finding that Mr. Burgoyne has carried his burden of establishing that he is entitled to receive the reasonable and necessary medical treatment, physical therapy, and a referral to the WVU Pain Clinic requested by Dr. Lynch. The Office of Judges and Board of Review also did not err when reopening the claim for additional temporary total disability benefits for the period from February 2, 2021, through May 6, 2021, because Dr. Lynch had not released Mr. Burgoyne to return to regular duty work during that time period.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn