

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Brandon Gilfilen,
Claimant Below, Petitioner

vs.) **No. 22-0241** (BOR Appeal No. 2057517)
(JCN: 2021003319)

Blackhawk Mining,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Brandon Gilfilen appeals the March 18, 2022, decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Blackhawk Mining filed a timely response.¹ The issues on appeal are the claims administrator's denial of a referral for a neurosurgical consultation, denial of a request for additional physical therapy, closure of the claim for temporary total disability benefits, finding of maximum medical improvement, and denial of the addition of cervical radiculopathy to the claim, which were affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and the Board of Review. 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 affirms prior rulings by both the Workers' Compensation Commission and 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 based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code §§ 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). 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. Gilfilen, an equipment operator, injured his neck and back in the course of his employment when he hit a hole, jarring his head and back. The claim was held compensable for lumbar and cervical sprains/strains. Letitia Tierney, M.D., treated Mr. Gilfilen for the compensable injury and referred him for a neurosurgical consultation and additional physical therapy. The referral requests were denied by the claims administrator. Mr. Gilfilen protested the decision. The claim was then closed for temporary total disability benefits, and the claims administrator modified the order to state that there was an overpayment of benefits. Prasadarao Mukkamala, M.D.,

¹Petitioner, Brandon Gilfilen, is represented by Reginald D. Henry, and respondent, Blackhawk Mining, is represented by Jane Ann Pancake and Jeffrey B. Brannon.

performed an independent medical evaluation in which he found that Mr. Gilfilen had reached maximum medical improvement. Jessica Wickline, D.O., then completed a diagnosis update requesting that cervical radiculopathy be added to the claim, which the claims administrator denied. In an application to reopen the claim for temporary total disability benefits, Mr. Gilfilen asserted that he also suffered a right knee injury. The physician's section was completed by Dr. Wickline who opined that Mr. Gilfilen had not reached maximum medical improvement. She asserted that Mr. Gilfilen was unable to tolerate full duty work, and the employer was unable to accommodate his light duty restrictions.

In its November 1, 2021, order, the Office of Judges affirmed the claims administrator's decisions denying a referral for a neurosurgical consultation, denying authorization of additional physical therapy, closing the claim for temporary total disability benefits, finding that Mr. Gilfilen had reached maximum medical improvement, and denying the addition of cervical radiculopathy to the claim. It found that Mr. Gilfilen's cervical radiculopathy was not the result of his compensable injury, physical therapy and a referral to a neurosurgeon were not necessary treatment for a compensable condition, the diagnosis of cervical radiculopathy was unconfirmed, and Mr. Gilfilen had reached maximum medical improvement. The Office of Judges relied on Dr. Mukkamala's independent medical evaluation, which it found was supported by the treatment notes of record. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order.

On appeal, petitioner asserts four assignments of error. First, that the Board of Review was clearly wrong to affirm the Office of Judges' order. Second, that the Board of Review was clearly wrong to find that cervical radiculopathy is not a compensable condition in the claim. Third, Mr. Gilfilen argues that the Board of Review was clearly wrong in failing to authorize a referral to a neurosurgeon because such treatment is necessary for the compensable injury. Lastly, Mr. Gilfilen argues that the Board of Review was clearly wrong to find that he reached maximum medical improvement and was no longer entitled to temporary total disability benefits.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The standard for the addition of a condition to a claim is the same as for compensability. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). A preponderance of the evidence of record fails to support the addition of cervical radiculopathy to the claim, particularly given the lack of a compensable herniated disc or testing confirming that Mr. Gilfilen does, in fact, have cervical radiculopathy. As the Office of Judges found, Dr. Mukkamala's opinion is supported by the treatment notes of record.

Regarding the request for a neurosurgical referral and additional physical therapy, West Virginia Code § 23-4-3(a)(1) provides that the claims administrator must provide medically related and reasonably required sums for healthcare services, rehabilitation services, durable medical and other goods, and other supplies. There is no evidence that a referral to a neurosurgeon is medically related or necessary treatment for the compensable sprains. The evidence also indicates that physical therapy is not necessary treatment given that it has proven to be ineffective.

Finally, the claim was properly closed for temporary total disability benefits. Pursuant to West Virginia Code § 23-4-7a, temporary total disability benefits will cease when the claimant has reached maximum medical improvement, has been released to return to work, or has returned to work, whichever occurs first. Dr. Mukkamala determined in his February 22, 2021, independent medical evaluation that Mr. Gilfilen reached maximum medical improvement for his compensable cervical and thoracic sprains.

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