

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**DALLAS HANKINS,  
Claimant Below, Petitioner**

**v.) No. 24-ICA-293 (JCN: 2021013918)**

**SPROUTING FARMS CORP.,  
Employer Below, Respondent**

**FILED  
February 28, 2025**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Dallas Hankins appeals the June 18, 2024, order of the Workers' Compensation Board of Review ("Board"). Respondent Sprouting Farms Corp. ("Sprouting Farms") filed a timely response.<sup>1</sup> Petitioner did not file a reply brief. The issue on appeal is whether the Board erred in affirming the claim administrator's order dated March 15, 2023, denying posterior interbody fusion at L5-S1, surgeon and assistant surgeon fees, pre-admission testing, postoperative visit, and antibiotics.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

On January 4, 2021, while working for Sprouting Farms, Mr. Hankins injured his low back when he was lifting boxes into a truck. The claim administrator held the claim compensable for a lumbar sprain/strain by orders dated January 13, 2021, and January 15, 2021.

Robert Crow, M.D., a neurosurgeon, examined Mr. Hankins on February 5, 2021. At the visit, Mr. Hankins reported low back pain radiating to his hips and groin with "twinges" of pain in his legs and feet along with some numbness and tingling down to his mid-thigh following a lifting injury at work on January 4, 2021. Based on the examination, and MRI/x-ray imaging performed in January of 2021, Dr. Crow noted spondylolisthesis of L5 on S1 and significant left neural foraminal stenosis, mild to moderate right neural foraminal stenosis at L5-S1, and spondylosis and disc degeneration at L4-L5 producing a

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<sup>1</sup> Mr. Hankins is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq. Sprouting Farms is represented by Jeffrey B. Brannon, Esq.

moderate right neural foraminal stenosis. Dr. Crow determined that Mr. Hankins' symptoms were not in a clear L5 or S1 radicular pattern in his left leg and there was no clear pathology on the MRI to explain Mr. Hankins' pain and paresthesias. Physical therapy was ordered and Mr. Hankins was taken off work. On February 26, 2021, Dr. Crow recommended lumbar transforaminal steroid injections and advised Mr. Hankins that surgery may be required.

A nerve conduction study performed by Georgianna Richards, M.D., on May 13, 2021, revealed low lumbar radiculopathy. However, a nerve conduction study on July 29, 2021, by Paul Ferguson, M.D., showed no evidence of radiculopathy, plexopathy, neuropathy, or nerve entrapment and was deemed a normal study. A CT performed on July 28, 2021, revealed bilateral L5 pars defects with antereolisthesis of L5 on S1 and disc bulging at L5-S1 with bilateral neuroforaminal narrowing.

On August 24, 2021, Syam B. Stoll, M.D., authored an addendum to a prior Independent Medical Examination ("IME") that he performed of Mr. Hankins. Based on a review of the nerve conduction studies, Dr. Stoll concluded that no acute lumbar radiculopathy was present. He commented that the study by Dr. Richards was nonspecific and vague as it did not mention a specific nerve root involved in the radiculopathy that she diagnosed. Further, based on the nerve conduction study by Dr. Ferguson and the findings in the MRIs, Dr. Stoll concluded that Mr. Hankins suffered from a lumbar sprain, but that he had underlying preexisting lumbar spondylosis and degeneration of the L5-S1 disc that were unrelated to the work injury. Dr. Stoll determined that the injections recommended by Dr. Crow were for age related, preexisting conditions that were not related to the compensable lumbar sprain. Further, Dr. Stoll opined that Mr. Hankins was at maximum medical improvement for his injury.

By order dated September 9, 2021, the claim administrator denied authorization for a left L5-S1 transforaminal epidural steroid injection. Temporary total disability benefits were also suspended. By order dated October 6, 2021, the claim administrator denied the compensability of lumbar radiculopathy. Both of these claim administrator's orders were the subject of prior litigation, and the Workers' Compensation Office of Judges affirmed the claim administrator's determinations by order dated July 11, 2022. In *Hankins v. Sprouting Farms Corp.*, No. 22-ICA-12, 2022 WL 17168088 (W. Va. Ct. App. Nov. 15, 2022) (memorandum decision), this Court affirmed the Office of Judges' order. The Supreme Court of Appeals of West Virginia affirmed this Court's ruling in *Hankins v. Sprouting Farms Corp.*, No. 22-919, 2024 WL 3618211, (W. Va. Aug. 1, 2024) (memorandum decision). Thus, lumbar radiculopathy is not compensable in this claim.

Richard Wisman, M.D., examined Mr. Hankins on October 27, 2021, due to complaints of back pain that went down into his left leg. It was noted that workers' compensation closed his claim as it was found that he had a prior lumbar condition. Dr.

Wisman assessed lumbar sprain and opined that it was a new injury that occurred while he was loading products into a delivery truck. According to Dr. Wisman, an injury in 2017 completely resolved within a week and Mr. Hankins did not have further back problems until the January 2021 injury. Dr. Wisman noted that Dr. Crow recommended injections, which were denied in the workers' compensation claim. Dr. Wisman agreed with Dr. Crow's recommendation and felt that the treatment was needed for the compensable injury, as he said there was no evidence that Mr. Hankins was being treated for any lumbar issues until the discrete new injury occurred.

On March 15, 2023, the claim administrator issued an order denying Dr. Crow's February 10, 2023, authorization request for L5-S1 posterior lumbar interbody fusion, surgeon and assistant surgeon fees, preadmission testing, postoperative visit, and antibiotic treatment prior to surgery. The claim administrator determined that the requested treatment was neither medically necessary nor reasonably required to treat the compensable conditions. Mr. Hankins protested this order to the Board.

Dr. Crow examined Mr. Hankins again on June 6, 2023, and noted that at a visit in February 2023, Mr. Hankins decided to proceed with posterior lumbar interbody fusion surgery to address his chronic low back and left leg pain because conservative treatment was not effective. Dr. Crow reported that Mr. Hankins now used a walker in his home and a wheelchair outside the home. Mr. Hankins indicated that he had intermittent symptoms of pain in his back and left buttock prior to the injury, but denied significant pre-injury leg symptoms. Dr. Crow reviewed a lumbar MRI from January 2023 and diagnosed the following conditions: chronic low back pain, degenerative lumbar spinal stenosis, lumbar radiculopathy, and lumbosacral spondylolisthesis. The surgical plan was for an L5-S1 posterior lumbar interbody fusion. On July 6, 2023, Dr. Crow performed the lumbar fusion at L5-S1 and his post-operative diagnosis was chronic low back pain with bilateral leg pain (left worse than right), L5-S1 spondylolisthesis with severe bilateral foraminal stenosis and lateral recess stenosis.

At a follow-up appointment on November 10, 2023, Mr. Hankins reported to Dr. Crow that the surgery resolved his leg symptoms, but he continued to have some right sided low back pain. Dr. Crow remarked that he was not surprised that Mr. Hankins continued to have some pain due to significant compression and condition of the nerve roots, and a referral was made to pain management. On January 11, 2024, Brian Yee, D.O., examined Mr. Hankins and diagnosed sacroiliitis and lumbar radiculopathy, for which he recommended sacroiliac joint injections. Dr. Yee performed an injection on January 29, 2024.

Records pertaining to medical treatment Mr. Hankins received related to prior low back injuries and treatment revealed that in November of 2003, a lumbar MRI revealed degenerative disc disease at L4-L5 with central protrusion of the disc and bilateral spondylolysis at L5. Mr. Hankins was treated for low back pain and pain down his left leg

in September of 2012 after he moved furniture. In May of 2014, a diagnostic test revealed bilateral pars defect and subluxation of L5 on S1 that was unchanged since 2011.

By order dated June 18, 2024, the Board affirmed the claim administrator's order dated March 15, 2023, which denied authorization for L5-S1 posterior lumbar interbody fusion, preadmission testing, postoperative visit, and antibiotic treatment prior to surgery. The Board noted that the claim is compensable for lower back strain and that a request to add lumbar radiculopathy as a compensable condition was previously denied. Dr. Crow's request for authorization of the treatment was not in the Board's record and it found that the evidence did not establish that the surgery and related treatment were medically necessary and reasonably required to treat the compensable lumbar sprain. Mr. Hankins now appeals.

Our standard of review is set forth in W. Va. Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm'n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

On appeal, Mr. Hankins argues the Board erred in finding that the surgery and related treatment were not medically related and reasonably required to treat the compensable injury. In support of his argument, Mr. Hankins asserts that Dr. Crow determined that the fusion was reasonable treatment for the injury and symptoms and he notes that the surgery greatly improved his leg symptoms. Further, Mr. Hankins argues that Drs. Wisman and Crow, his treating physicians, were in the best position to determine appropriate and reasonable treatment. Both physicians, Mr. Hankins contends, noted that his symptoms began with the compensable injury. Thus, Mr. Hankins argues that the Board's order should be reversed and treatment authorization be granted. We disagree.

In its order, the Board noted that Dr. Crow's request for lumbar fusion was not in the record. Further, the Board found that the evidence in its record did not establish that the surgery was medically necessary and reasonably required to treat the compensable lumbar sprain.

First, we note that the claim is compensable solely for a lumbar sprain. The compensability of radiculopathy was previously litigated and was not found to be compensable. Next, as Sprouting Farms points out, this Court and the Supreme Court of Appeals of West Virginia ruled in this claim that since lumbar radiculopathy was not compensable, epidural injections requested by Dr. Crow were not medically related and reasonably required treatment for the compensable injury. Sprouting Farms argues that, like injections, the request for lumbar surgery is not medically related or reasonably required to treat the compensable condition in the claim. We agree.

Based on the foregoing, we find that Mr. Hankins has failed to demonstrate that the Board was clearly wrong in affirming the claim administrator's order dated June 18, 2024.

Accordingly, we affirm.

Affirmed.

**ISSUED:** February 28, 2025

**CONCURRED IN BY:**

Chief Judge Charles O. Lorensen  
Judge Daniel W. Greear  
Judge S. Ryan White