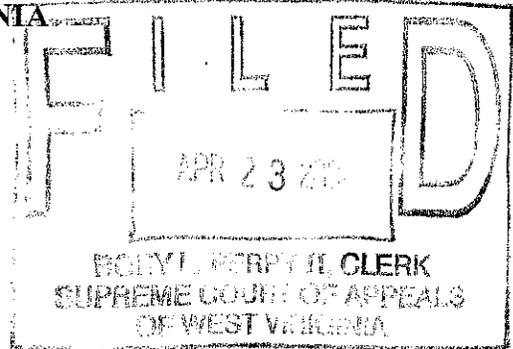


BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA



DARRELL W. DOTSON

Petitioner,

v//

CLAIM NO.: 980052476

DOI: 03/23/98

APPEAL NO. 77728

MEADOW RIVER COAL COMPANY and
WVOIC,

Respondents.

PETITION FOR APPEAL

ON BEHALF OF THE PETITIONER/CLAIMANT,

DARRELL W. DOTSON

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TABLE OF AUTHORITIES

1. W.Va. Code §23-4-3(a)(10)
2. Ney vs. State Workmens' Compensation Com'r, 297 S.E.2d 212, (1982).
3. 85 CSR 20.12.2

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BRIEF IN SUPPORT OF THE
PETITION FOR APPEAL ON BEHALF OF THE
PETITIONER/CLAIMANT, DARRELL W. DOTSON

TYPE OF PROCEEDING

This is the brief in support of the Petition for Appeal on behalf of the Petitioner/Claimant, Darrell W. Dotson, hereinafter referred to as "claimant", from the Final Order for the Workers' Compensation Board of Review, hereinafter referred to as "Board of Review", dated April 5, 2007, (*Exhibit A*) which affirmed the Decision of the Administrative Law Judge, hereinafter referred to as "ALJ" dated July 25, 2006. (*Exhibit B*) In this Decision, the ALJ affirmed the Order of the Workers' Compensation Commission, hereinafter referred to as "Commission", dated February 15, 2006 (*Exhibit C*), which denied authorization to add depression as a compensable component of this

claim. The claimant contends that the Board of Review and the ALJ were clearly wrong in their decisions to deny the addition of depression as a compensable component of this claim.

The claimant, Darrell W. Dotson, respectfully requests that this Honorable Court accept his Petition for Appeal and thereafter reverse the Board of Review's Order dated April 5, 2007 and add depression as compensable component of this claim.

FACTUAL AND PROCEDURAL BACKGROUND

The claimant was an underground coal miner for twenty-three (23) years. On March 23, 1998 the claimant was pulling a miner cable when he injured his lumbar and cervical spine. The claim was held compensable by the Commission's Order of May 1, 1998.

The claimant eventually returned to work and continued to work until he was forced to quit in June of 1998 because of severe lumbar pain.

On February 1, 2006, the claimant's treating physician, Dr. Margaret S. Wantz, requested that depression be added as a compensable component of this claim. (*Exhibit D*)

A report by the Office Medical Management, dated February 13, 2005, noted that depression was not a condition which should be added as a compensable condition to this claim because the diagnosis of depression was not made within six (6) months of the initial injury. The report further stated that Zoloft, a medication used to treat depression, would be appropriate to maximize recovery from the work-related injury, and had been authorized in the past, however, it was not necessary to add depression as a compensable condition in this claim in order to obtain treatment.

Based upon this report, the Commission, by an Order dated February 15, 2005, denied the addition of depression as a compensable component of this claim pursuant to Title 85-20-12.2,

because the diagnosis of depression was not made within six (6) months of the initial injury. The claimant protested this Order.

In support of his protest, the claimant submitted the medical records of Dr. Margaret S. Wantz for the period from June 1, 1999 through February 1, 2006. In a medical note, dated June 4, 1999, Dr. Wantz noted that the claimant had been almost tearful during the last several visits. During a June 1, 1999 visit, the claimant reported to Dr. Wantz that he was becoming more and more depressed due to pain and being unable to work. Dr. Wantz continually stated, in her medical records, on numerous examination dates, that the claimant was depressed and she continually prescribed Zoloft to treatment the claimant's depression. This medication was authorized by the Commission.

The claimant also submitted the medical report of Dr. Wantz, dated February 1, 2006. In this report, Dr. Wantz stated that the claimant had no history of depression prior to his compensable injury, the claimant was disabled and was unable to perform his job and was unable to perform many activities of daily living. Dr. Wantz further stated that the claimant suffered from chronic pain as a result of this compensable injury and, in her medical opinion, the claimant's depression was directly related to his compensable back injury.

The Commission submitted a closing argument, dated February 15, 2006, which reiterated the Office of Medical Management report dated February 13, 2006 and argued that the denial of the additional of depression should be affirmed.

In his Decision, the ALJ found that the claimant was not diagnosed with depression within the first six (6) months after the initial injury and had not shown that the depression originated from the compensable injury. The lack of a definitive diagnosis of depression within six (6) months after

the date of injury was the primary, if not exclusive, basis used by the ALJ to affirm the Commission's Order.

The employer did not submit any evidence in this protest. Apparently, the Board of Review agreed with the ALJ when it affirmed his Decision.

ISSUE

WHETHER THE BOARD OF REVIEW AND THE ALJ ERRED IN AFFIRMING THE COMMISSION'S ORDER DATED FEBRUARY 15, 2006, DENYING THE ADDITION OF DEPRESSION AS A COMPENSABLE COMPONENT OF THIS CLAIM?

AUTHORITIES RELIED UPON

1. W.Va. Code §23-4-3(a)(10)
2. Ney vs. State Workmens' Compensation Com'r, 297 S.E.2d 212, (1982).
3. 85 CSR 20.12.2

LAW AND ARGUMENT

THE BOARD OF REVIEW AND THE ALJ ERRED IN AFFIRMING THE COMMISSION'S ORDER DATED FEBRUARY 15, 2006, DENYING THE ADDITION OF DEPRESSION AS A COMPENSABLE COMPONENT OF THIS CLAIM.

West Virginia Code Section 23-4-3 mandates that "the Division shall disperse and pay from the Fund for such personal injuries to such employees as may be entitled thereto hereunder as follows: 1) such sums for healthcare services, rehabilitations services, durable medical and other goods and other supplies in medically related items as may be reasonably required. W.Va. Code §23-4-3(a)(10).

“One of the basic purposes of Workmens’ Compensation Legislation is to impose upon industry the costs of medical expenses incurred in the treatment and rehabilitation of workers who have suffered injuries in the course of and as a result of their employment. Section 3 authorizes the Commissioner to make such payments for medical treatment as may be reasonably required.” Ney vs. State Workmens’ Compensation Com’r, 297 S.E.2d 212 (W.Va. 1982).

In this claim, the Board of Review and the ALJ were clearly wrong in their conclusions that the claimant had not shown that depression originated from the compensable injury based upon Title 85-20-12.2. The medical evidence submitted was undisputed and clearly proved that the claimant suffered a permanent compensable back injury which requires continued medical treatment and medication for chronic pain. In addition, the medical evidence of record clearly proved that the claimant suffered from depression as a direct result of this compensable back injury. The regulation relied upon by the Board of Review and the ALJ to deny the claimant’s request are merely guidelines which are not meant to be absolute rules to be followed when reviewing the necessity for medical treatment. The claimant’s treating physician, Dr. Wantz, clearly set forth the claimant’s compensable injuries, his resulting depression and the necessity of ongoing treatment for depression and that the claimant’s depression resulted from his compensable injuries. This evidence was unrebutted and was clearly credible. Dr. Wantz, as the claimant’s treating physician, was in the best position to determine the medical condition of the claimant. To deny this diagnosis would result in the claimant suffering unduly and is contrary to the statutes which require that injured workers be provided the treatment necessary to treat their injuries.

As the Honorable Court is aware, depression may not always manifest itself within any certain time period. In this case, depression clearly resulted from the claimant’s chronic pain and

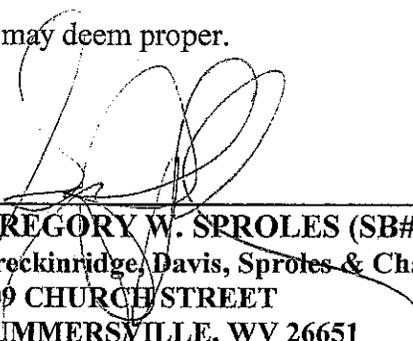
inability to work, all of which was a direct result of his compensable injury. To deny the addition of depression merely because the claimant did not present obvious symptoms within six (6) months after his injury ignores the cause of the depression, to-wit: the claimant's chronic pain and inability to work. To deny the addition of depression in this claim would mean that simply because a man was trying to cope with his symptoms and was not wanting to admit that he was depressed this condition could never be recognized as resulting from the compensable injury.

Clearly, if the Board of Review and the ALJ had fairly weighed the evidence, they should have concluded that the requested additional diagnosis of depression was appropriate and should have been recognized as a compensable condition in this claim. To decide otherwise was clear error.

CONCLUSION

The Petition/Claimant, therefore, respectfully prays that this Honorable Court accept his Petition for Appeal and, thereafter, reverse the Board of Review's Order dated April 5, 2007 and the ALJ's July 25, 2006 Decision, and add depression as an additional condition of this claim. The claimant further prays that this Honorable Court grant him such other and further general relief as it may deem proper.

**DARRELL W. DOTSON
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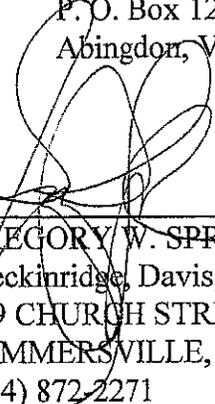
CERTIFICATE OF SERVICE

I, Gregory W. Sproles, the undersigned counsel, do hereby certify that I have served the attached **Brief in Support of the Petition for Appeal on Behalf of the Petitioner/Claimant, Darrell W. Dotson**, by depositing a true copy thereof in the United States mail, first class postage prepaid on this the 20th day of April, 2007, addressed as indicated below:

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