

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

JARROD A. MARTIN,
Claimant Below, Petitioner

FILED
September 30, 2016
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 15-0966** (BOR Appeal No. 2050269)
(Claim No. 2012021581)

CITY OF BECKLEY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jarrod A. Martin, by Gregory S. Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. City of Beckley, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 4, 2015, in which the Board affirmed the February 23, 2015, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 11, 2014, denial of a request for physical therapy and a series of lumbar epidural steroid blocks. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Jarrold Martin was hired by the City of Beckley to be a police officer. He was sworn in on November 29, 2011. On December 16, 2011, Mr. Martin injured his back when he was tased during a training class. He sought treatment with Robert Evans, D.C., on December 19, 2011. Dr. Evans diagnosed severe thoracic sprain/strain. The claim was held compensable for a thoracic sprain. Mustafa Rahim, M.D., treated Mr. Martin on January 4, 2012. Dr. Rahim diagnosed thoracic sprain. On January 19, 2012, Mr. Martin reported to Dr. Rahim that his back pain was gone. Mr. Martin told Dr. Rahim that he thought he had a bad muscle strain and that he did not want to have any additional treatment as his symptoms had resolved.

Mr. Martin started his own handyman business in February of 2012. He did not seek medical treatment again until July 31, 2012, when he went to see A.E. Landis, M.D. Dr. Landis diagnosed a strain/sprain type injury of the thoracic spine. An MRI of the thoracic spine revealed old, mild anterior compression fractures of the T4, T5, and T6 with multi-level disc degeneration. On September 6, 2012, Dr. Landis determined Mr. Martin's complaints were most likely related to an aggravation of a pre-existing degenerative disc disease. He recommended physical therapy.

Mr. Martin changed his treating physician and started treating with Syed Zahir, M.D., on October 5, 2012. Dr. Zahir noted that Mr. Martin had complaints of low back pain, which he said had been present since the December 16, 2011, incident. Dr. Zahir diagnosed chronic upper and lower back pain. An MRI of the lumbar spine revealed a small central disc protrusion at L5-S1 with disc degeneration. Dr. Zahir continued to treat Mr. Martin for chronic upper and lower back pain. On December 27, 2012, Dr. Zahir added the diagnosis of chronic neck pain and requested authorization for a cervical MRI. Authorization for the cervical MRI was denied by the claims administrator.

Paul Bachwitt, M.D., evaluated Mr. Martin on December 18, 2012. Dr. Bachwitt diagnosed thoracic sprain/strain. He determined that the degenerative changes in the thoracic spine pre-existed the December 16, 2011, incident. In his opinion, no additional medical treatment was needed. He assessed 5% impairment. On December 27, 2012, the claims administrator granted Mr. Martin a 5% permanent partial disability award.

Mr. Martin submitted a claim re-opening application requesting temporary total disability benefits, physical therapy, and a series of epidural shots on January 31, 2014. On February 17, 2014, Dr. Zahir diagnosed herniated L5-S1 disc, neuropathy, and chronic back pain. He recommended physical therapy for the lumbar spine and a series of epidural blocks. This request was denied by the claims administrator on February 19, 2014, because the lumbar spine was not a compensable condition. Mr. Martin filed a grievance.

Mr. Martin was seen by Matthew Nelson, M.D., on March 6, 2014, for lumbar spine pain. On March 7, 2014, Melissa McMillen, D.C., started treating him for mid-back, low-back, and neck pain, all of which he reported to be new problems. Dr. McMillen continued to treat Mr. Martin through June of 2014.

The claims administrator denied the request for physical therapy and a series of epidural blocks for the second time on April 11, 2014, after the grievance had been reviewed. On August 12, 2014, Dr. Zahir testified by deposition. Dr. Zahir understood the claim to be compensable for the back, including the lumbar spine, neuropathic pain, and a bulging disc. The treatment he recommended was focused on the lumbosacral spine.

The Office of Judges affirmed the claims administrator's denial of the requested medical treatment in its February 23, 2015, Order. It noted that Mr. Martin initially experienced pain in his mid-back and it was not until October 5, 2012, that the medical records document lumbar spine pain. It also found that the medical records document Mr. Martin's continued lumbar spine

pain and that the recommended treatment may be reasonable treatment for the lumbar spine. However, the thoracic spine was the only compensable condition. The requested treatment was not for the thoracic spine, and therefore, was properly denied.

The Board of Review adopted the Office of Judges' findings of fact and conclusions of law in affirming the Office of Judges' Order in its September 4, 2015, decision. After review, we agree with the reasoning of the Office of Judges and the conclusions of the Board of Review. The claim was held compensable for a thoracic sprain. The treatment Dr. Zahir requested is for the lumbar spine. Therefore, the treatment is not reasonable and necessary for the effects of the work injury.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: September 30, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Allen H. Loughry II