

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

JEFFREY FRAZIER,
Claimant Below, Petitioner

vs.) No. 18-0473 (BOR Appeal No. 2052337)
(Claim No. 2016018842)

MATO CORPORATION,
Employer Below, Respondent

FILED
November 2, 2018

EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Jeffrey Frazier, by Reginald Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mato Corporation, by Jeffrey Brannon, its attorney, filed a timely response.

The issues presented on appeal deal with the addition of compensable components to the claim, as well as benefits and treatment for the additional components. The claims administrator denied Mr. Frazier's request for the medication Carbamazepine in an Order dated February 16, 2017. On March 1, 2017, the claims administrator closed the claim for temporary total disability benefits. The claims administrator denied a request for a referral to Andrew Thymus, D.O., on March 9, 2017. The claims administrator issued an Order on March 17, 2017, which denied adding left foot pain, neuralgia, and neuritis as compensable components in the claim. Following a grievance petition filed by Mr. Frazier's counsel, the claims administrator issued another Order on March 30, 2017, affirming its March 17, 2017, decision to deny adding compensable conditions to the claim. The Workers' Compensation Office of Judges affirmed the decisions of the claims administrator on November 13, 2017. This appeal arises from the Board of Review's Final Order dated April 24, 2018, in which the Board affirmed the decision of the Office of Judges. 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.

Mr. Frazier, a warehouse manager, sustained an injury on January 21, 2016, when a piece of metal fell on his foot. He initially treated at MedExpress on January 24, 2016, and was diagnosed with left foot contusion. He underwent an x-ray of his left foot on January 24, 2016, which showed no acute body abnormality. The claims administrator issued an Order on January 28, 2016, holding the claim compensable for a left foot contusion.

On March 3, 2016, Mr. Frazier attended an evaluation with neurologist, Barry Vaught, M.D. Mr. Frazier reported to the evaluation with complaints of foot pain and tingling. Dr. Vaught administered an EMG nerve conduction study, which came back as unremarkable. Dr. Vaught prescribed medication and referred Mr. Frazier to podiatrist Blake Weeks, M.D.

An MRI conducted at Raleigh General Hospital on March 28, 2016, revealed osteoarthritic changes of the first metatarsophalangeal joint with spurring of the proximal phalanx and the first metatarsal head. There were abnormalities of the proximal phalanx of the great toe with a bone cyst and there were osteoarthritic changes at the distal interphalangeal joints with near fusions of the third digit. There was also some subcutaneous edema with mild fibrosis adjacent to the first and fifth metatarsals. Osteoarthritic changes were noted at the first metatarsophalangeal joint.

On May 24, 2016, Mr. Frazier attended an independent medical evaluation with Joseph E. Grady, M.D. Dr. Grady opined that Mr. Frazier had reached his maximum medical improvement and that he was status post blunt trauma to the left foot with residual superficial peroneal nerve neuralgia. Using the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Dr. Grady concluded that Mr. Frazier has 1% whole person impairment for his left foot injury. Dr. Grady recommended that he could return to work without any specific work restrictions.

On June 13, 2016, Mr. Frazier attended a follow-up evaluation with Dr. Vaught, who noted that Mr. Frazier still complained of intermittent pain and swelling in his left foot. Dr. Vaught remarked that he had undergone an MRI and an EMG that both came back as unremarkable. Dr. Vaught stated that Mr. Frazier could potentially have reflex sympathetic dystrophy. An evaluation with an orthopedic surgeon and interventional pain specialist was recommended. After receiving a letter from Dr. Vaught regarding his latest evaluation, Dr. Grady issued an addendum report on June 21, 2016, and indicated that Mr. Frazier did show signs of reflex sympathetic dystrophy but that it would be reasonable for him to follow-up with an interventional pain specialist for additional testing.

On January 10, 2017, Mr. Frazier attended an independent medical evaluation with A. E. Landis, M.D. Dr. Landis concluded that Mr. Frazier sustained a contusion type injury to his left forefoot and there were no complex regional pain syndrome findings on exam. Dr. Landis opined that Mr. Frazier had reached his maximum medical improvement, and Dr. Landis concluded that the majority of the symptoms in the left foot are coming from advanced degenerative changes in the first metatarsal phalangeal joint which was not caused by this injury. Dr. Landis stated that it

was possible that Mr. Frazier aggravated his condition, to some extent, by the injury. Dr. Landis noted that the only ratable condition was related to aggravation of pre-existing degenerative changes in the great toe and assigned 1% whole person impairment.

Mr. Frazier was once again seen by Dr. Vaught on February 9, 2017. Dr. Vaught assessed Mr. Frazier with neuritis and pain in his left foot. Dr. Vaught noted that Mr. Frazier was having left foot numbness while standing. Dr. Vaught did not believe Mr. Frazier had reached his maximum medical improvement and recommended a ganglion block injection. Dr. Vaught opined that Mr. Frazier was not able to return to work.

Dr. Vaught requested a Diagnosis Update on February 13, 2017. Dr. Vaught stated that Mr. Frazier had not been released to return to work. Dr. Vaught listed left foot pain and neuralgia/neuritis as conditions to be treated. The update stated, "Left foot numbness and allodynia. Painful to touch. Unable to tolerate wearing shoes/boots. Burning and freezing sensations. Unable to push off or put pressure on left foot. The pain is worse after excessive standing. The symptoms started after a 35 pound piece of metal fell on his foot at work." Dr. Vaught felt that Mr. Frazier was temporarily and totally disabled due to his left foot extremity symptoms, and he has been since his date of injury. Dr. Vaught recommended that additional treatment, in the form of sympathetic ganglion block, should be performed by an interventional pain specialist.

On February 16, 2017, the claims administrator issued an Order denying Mr. Frazier's request for the medication Carbamazepine. The medication was denied on the basis of the independent medical evaluation report of Dr. Landis, who advised that no further treatment was needed for the compensable injury. Mr. Frazier protested the decision of the claims administrator.

On March 1, 2017, the claims administrator issued an Order closing Mr. Frazier's claim for temporary total disability benefits. The claims administrator based its decision upon the report of Dr. Landis. Because the claims administrator adopted the opinion of Dr. Landis, that Mr. Frazier was not in need of additional treatment, it also issued an Order on March 9, 2017, which denied a request for a referral to Andrew Thymus, D.O.

On March 17, 2017, the claims administrator issued an Order denying the addition of pain of the left foot, neuralgia, and neuritis to the claim. On March 30, 2017, a correspondence from AIG Claims, Inc., notified Mr. Frazier that it had received a grievance regarding the denial of adding pain in the left foot, neuralgia and neuritis as compensable conditions in his claim. Raelynn Brimmer, Senior Claim Representative, denied the grievance and affirmed the prior ruling which denied adding additional components to the claim. Ms. Brimmer stated that she based her decision on the independent medical evaluation from Dr. Landis.

In an EMG report dated June 22, 2017, Glenn Goldfarb, M.D., noted no abnormalities in Mr. Frazier's tarsal, and that the electrodiagnosis for the left foot injury was normal. The study was a normal study with no findings of neuropathy or tarsal tunnel syndrome.

In his independent medical evaluation report of June 23, 2017, Prasadarao B. Mukkamala, M.D., noted that he did not find any pathology that precluded Mr. Frazier from returning to previous job. Dr. Mukkamala did not find evidence of reflex sympathetic dystrophy or any residual pathology secondary to the compensable incident. Dr. Mukkamala concluded that Mr. Frazier sustained a contusion of the left foot, from which he had reached maximum medical improvement and did not require any further treatment, including prescriptions for Carbamazepine or pain management. Dr. Mukkamala concluded that Mr. Frazier has 1% whole person impairment as a result of his injury.

By Office of Judges decision dated November 13, 2017, the claims administrator's Orders of March 17, 2017, and March 30, 2017, denying the addition of secondary conditions were affirmed. The Office of Judges concluded that there is no objective evidence in the record that Mr. Frazier has any nerve abnormalities. His EMGs were unremarkable, and his MRI showed only arthritis and a bone cyst. The Office of Judges noted that all three independent medical evaluators, Drs. Grady, Landis and Mukkamala, did not find evidence of nerve damage. In fact, Dr. Landis opined that most of Mr. Frazier's symptoms were due to his advanced degenerative processes.

The Office of Judges next addressed the issue of additional treatment and the request for Carbamazepine. The Office of Judges noted that Dr. Vaught had requested a referral to Dr. Thymius, an interventional pain management specialist, and the medication Carbamazepine for pain management of Mr. Frazier's neuralgia/neuritis, which is not a compensable component of the claim. The Office of Judges determined that the medication, as well as the referral for pain management, is not medically necessary or reasonably required as treatment of the compensable condition and was properly denied. Thus, the claims administrator's Orders dated March 9, 2017, and February 16, 2017, were affirmed.

Regarding Mr. Frazier's protest to the claims administrator's Order of March 1, 2017, closing the claim for temporary total disability benefits, the Office of Judges stated that Dr. Landis determined that Mr. Frazier had reached maximum medical improvement on January 10, 2017. Although Dr. Vaught opined that Mr. Frazier was unable to work, the Office of Judges reasoned that his assessment was based upon non-compensable neuralgia/neuritis. The Office of Judges affirmed the claims administrator's decision to close the claim for temporary total disability benefits.

In all, the Office of Judges affirmed the claims administrator Orders of February 16, 2017; March 1, 2017; March 9, 2017; and March 30, 2017. The Board of Review adopted the findings of fact and conclusions of the Office of Judges and affirmed its Order on April 24, 2018. Mr. Frazier appealed to the West Virginia Supreme Court of Appeals.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The components that Mr. Frazier seeks to be added to the claim are not warranted. The Office of Judges correctly determined that his left foot pain is merely a symptom. Further, there is no indication that he suffers from neuralgia/neuritis and the requested medication and referral are for non-compensable nerve issues. Mr. Frazier has reached his maximum degree of medical improvement and is not entitled to additional temporary total disability benefits. Based on the record, the Board of Review's Order should be affirmed.

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: November 2, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Elizabeth D. Walker

Justice Paul T. Farrell sitting by temporary assignment

Justice Tim Armstead

Justice Evan H. Jenkins

Justice Allen H. Loughry II suspended and therefore not participating.