

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**KEVIN SPROUSE,**  
**Claimant Below, Petitioner**

vs.) **No. 18-0486** (BOR Appeal No. 2052366)  
(Claim No. 2017016403)

**MURRAY AMERICAN ENERGY, INC.,**  
**Employer Below, Respondent**

**FILED**  
**November 2, 2018**

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

**MEMORANDUM DECISION**

Petitioner Kevin Sprouse, by Robert L. Stultz, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Murray American Energy, Inc., by Denise D. Pentino and Aimee M. Stern, its attorneys, filed a timely response.

The issue on appeal is the closing of the claim for temporary total disability benefits. The claims administrator closed Mr. Sprouse's claim for temporary total disability benefits on June 2, 2017. The Workers' Compensation Office of Judges affirmed the closing of the claim for temporary total disability benefits in a Final Order dated November 17, 2017. This appeal arises from the Board of Review's Order dated April 30, 2018, in which the Board affirmed the November 17, 2017, Order 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. Sprouse was working at Murray American Energy, Inc.'s Marion County Coal Company on December 15, 2016, when he suffered an injury to his upper and lower back while lifting a rock. He sought treatment at MedExpress in Fairmont, where he complained of pain in his upper back and burning into his lower back. A lumbar spine x-ray performed at MedExpress was negative for acute fracture and documented mild degenerative changes. Mr. Sprouse was

diagnosed with thoracic spine sprain and lumbar spine sprain. He was placed on light duty work restrictions. A Report of Injury was filed on December 16, 2016. MedExpress personnel completed the healthcare provider's portion of the Report, listing the compensable diagnoses as lumbar and thoracic spine sprains.

Mr. Sprouse returned to MedExpress on December 23, 2016, reporting burning, hurting and upper back tightness. The only abnormal examination finding was paraspinous tenderness noted in the upper and lower back. Mr. Sprouse was referred to physical therapy.

Mr. Sprouse began undergoing physical therapy on December 29, 2016, at HealthWorks Rehab & Fitness. He complained of pain in his cervical, thoracic, and lumbar spine. The therapist, Mark A. Hose, observed that while Mr. Sprouse exhibited guarded movements when asked to test range of motion at each spinal level, he showed more free movement in the spine when he was simply moving around the room. Mr. Hose recommended a physical therapy treatment plan to improve Mr. Sprouse's general mobility of his entire spine with flexibility and range of motion. The plan called for therapy three times a week for eight weeks.

By Order of the claims administrator dated January 13, 2017, the claim was held compensable for strain of ligaments of the lumbar spine and sprain of ligaments of the thoracic spine. The claims administrator also granted temporary total disability benefits to Mr. Sprouse beginning on December 16, 2016.

Mr. Sprouse returned to MedExpress on January 13, 2017, with continued complaints of burning between his shoulder blades and in his lower back. He reported that his condition was improving with physical therapy. However, he also reported that he suffered burning and discomfort following his therapy sessions. Mr. Sprouse was advised to get plenty of rest and to apply a warm compress to the affected area up to four times a day. Mr. Sprouse followed up at MedExpress on March 7, 2017, and reported that his symptoms had not improved. It was recommended that he visit a spine specialist for additional consideration.

Prasadarao Mukkamala, M.D., examined Mr. Sprouse on February 17, 2017. On exam, Dr. Mukkamla found no paraspinal muscle spasm, paraspinal muscle tenderness or vertebral tenderness in the thoracic spine. In the lumbar spine, he found no paraspinal muscle spasm or tenderness, but did note vertebral tenderness in the midline of the low back. Dr. Mukkamala documented thoracic flexion as 54°, right rotation of 26°, and left rotation of 28°. Mr. Sprouse's lumbar flexion was 31°, extension was 26°, right lateral flex was 16°, and left lateral flexion was 15°. Dr. Mukkamla concluded that Mr. Sprouse had not yet reached maximum medical improvement. He recommended an additional four weeks of physical therapy.

Mr. Sprouse was re-examined by Dr. Mukkamala on April 7, 2017. He again complained of pain in his low back with radiation to his left lower extremity, as well as pain between his shoulder blades. At the time of the examination, Mr. Sprouse had completed more than twenty physical therapy sessions. Dr. Mukkamala found that Mr. Sprouse's grip strength was significantly less than the grip strength he measured during his February 17, 2017, examination. Dr. Mukkamala stated that Mr. Sprouse's back injury would not affect his grip strength;

however, he noted that this finding “indicates that there was significant deterioration of the general function which again is indicative of his motivation and participation in physical therapy.” Mr. Sprouse’s thoracic spine range of motion measurements were fairly consistent, and were within normal limits. Dr. Mukkamala indicated that Mr. Sprouse’s lumbar extension and right and left lateral flexion measurements varied with repeated attempts. Dr. Mukkamala concluded that Mr. Sprouse had reached his maximum degree of medical improvement. No additional diagnostic testing was recommended. It was noted that he should be able to return to work with no limitations or restrictions. Dr. Mukkamala found no permanent impairment resulting from Mr. Sprouse’s thoracic spine sprain, based upon his normal thoracic spine range of motion. He noted that Mr. Sprouse’s lumbar spine measurements did not meet validity requirements for an impairment rating, and Dr. Mukkamala placed him under II-B from Table 75 of the American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), for a 5% whole person impairment resulting from his lumbar sprain. Dr. Mukkamala also noted physical limitations due to symptom magnification and illness exaggerating behavior.

On April 18, 2017, the claims administrator suspended Mr. Sprouse’s temporary total disability benefits based upon Dr. Mukkamala’s report. On June 2, 2017, the claims administrator issued an Order closing the claim for temporary total disability benefits. Once again, the claims administrator based its decision upon the recommendations of Dr. Mukkamala. Mr. Sprouse protested the decision.

Mr. Sprouse testified by deposition on July 28, 2017, that he injured his lower back and between his shoulder blades on the date of his injury. Following his injury, Mr. Sprouse underwent over fifty sessions of physical therapy. Because he was not improving, he stated that he used his private insurance to have an orthopedic consultation at Ruby Memorial Hospital. The physicians at Ruby Memorial Hospital scheduled an MRI to evaluate his spine. Mr. Sprouse stated that he did not have previous back problems before his injury at work. He testified that he is unable to work because he cannot lift anything over ten pounds. Even lifting a gallon of milk causes strain on his lower back.

By Order dated November 17, 2017, the Office of Judges affirmed the claims administrator’s June 2, 2017, Order. The Office of Judges determined that Mr. Sprouse did not submit medical evidence that he was not at maximum medical improvement and unable to work due to his compensable injuries. The Office of Judges noted that Dr. Mukkamala’s findings of symptom magnification and exaggerated behavior were corroborated by the physical therapist who treated Mr. Sprouse on December 29, 2016. On April 30, 2018, the Board of Review affirmed the decision of the Office of Judges, adopting its findings of fact and conclusions of law.

After review, 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.