

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**MICHAEL PHIPPS,
Claimant Below, Petitioner**

vs.) **No. 12-0504** (BOR Appeal No. 2046534)
(Claim No. 2011031692)

**ZINN HOE SERVICE, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Michael Phipps, by Robert L. Stultz, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Zinn Hoe Services, Inc., by James Heslep, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 21, 2012, in which the Board affirmed a September 27, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 28, 2011, decision which held the claim compensable for overexertion, strenuous movements, and sprain of the knee and leg but denied coverage for joint pain in the knee and leg, lumbago, lumbosacral neuritis, and cervicgia. 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. Phipps worked for Zinn Hoe Services, Inc., as a laborer. On January 12, 2011, he was injured when he slipped and twisted his knee. He was initially treated at Tri-County Hospital for left knee pain. Mr. Phipps was then treated at St. Joseph's Hospital for a possible cardiac event. An MRI at that time showed degenerative disc disease at all levels. Mr. Phipps filed an application for workers' compensation benefits based on his injury alleging that he had also injured his neck and back during the fall. On February 28, 2011, the claims administrator held

Mr. Phipps's injury compensable for overexertion, strenuous movement, and sprain of the leg and knee. The claims administrator also specifically denied coverage for joint pain of the leg and knee, lumbago, lumbosacral neuritis, and cervicalgia. Mr. Phipps's claim was then reviewed by Dr. Short, who recommended against adding the requested additional diagnoses as compensable components of the claim because Mr. Phipps did not initially complain of neck or back pain at the time of the injury. On September 27, 2011, the Office of Judges affirmed the claims administrator's decision denying coverage for the additional diagnoses. The Board of Review then affirmed the Order of the Office of Judges on March 21, 2012, leading Mr. Phipps to appeal.

The Office of Judges concluded that Mr. Phipps did not develop joint pain in his leg and knee, lumbago, lumbosacral neuritis, or cervicalgia on January 12, 2011, in the course of or as a result of his employment. The Office of Judges found that the requested conditions are often affiliated with degenerative joint disease and degenerative disc disease of the spine. The Office of Judges found that Mr. Phipps was diagnosed with degenerative joint disease and degenerative disc disease of the cervical and lumbar spine less than a month after his occupational fall. The Office of Judges found that there was no persuasive medical evidence that linked the requested additional conditions to the compensable injury. The Office of Judges found that the only medical evidence of record that addressed whether the conditions should be included under the claim was the report of Dr. Short, who recommended against adding them. The Office of Judges found that Dr. Short's opinion was not impeached. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Phipps has not demonstrated that he received injuries to his neck and back on January 12, 2011, in the course of and resulting from his employment. There is no medical evidence of record that demonstrates that there is any connection between the injuries Mr. Phipps received to his left knee and the requested additional conditions.

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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating