

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

ROBERT L. NOON,
Claimant Below, Petitioner

vs.) **No. 12-0554** (BOR Appeal No. 2046568)
(Claim No. 2010135998)

MEDFORD TRUCKING, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robert L. Noon, by Patrick Kevin Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Medford Trucking, LLC, by Daniel G. Murdock, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 4, 2012, in which the Board affirmed an October 11, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 27, 2011, decision denying additional chiropractic treatment and a neurological evaluation. 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. Noon was a truck driver for Medford Trucking, LLC. On May 19, 2010, Mr. Noon sustained a low back injury while trying to avoid a motor vehicle accident. X-rays taken after the injury revealed anterior and lateral osteophytosis and facet joint degenerative disease in his lumbar spine. But the claims administrator held his injury compensable. Mr. Noon also underwent an MRI at Charleston Area Medical Center which revealed mild degenerative disc disease and facet arthropathy. On October 19, 2010, Dr. Bachwitt performed an independent medical evaluation of Mr. Noon. He found that Mr. Noon has a lumbar strain which was

superimposed on pre-existing degenerative disc disease of the thoracic and lumbar spine. Dr. Bachwitt found that Mr. Noon had reached the maximum degree of medical improvement and required no additional treatment. Mr. Noon then sought treatment from Dr. Cottrell, who found that Mr. Noon had degenerative disc disease which affected his right lower extremity. After a course of chiropractic care, Dr. Cottrell also found that Mr. Noon was no longer improving with treatment. Dr. Cottrell requested authorization for additional chiropractic services and a neurological evaluation. On January 27, 2011, the claims administrator denied Dr. Cottrell's request. On October 11, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on April 4, 2012, leading Mr. Noon to appeal.

The Office of Judges concluded that the request for additional chiropractic treatment and a neurological consultation was not supported by a preponderance of the evidence as being reasonable, necessary, or related to the compensable injury. The Office of Judges found that Mr. Noon had reached the maximum degree of medical improvement relating to his compensable injury. The Office of Judges also found that diagnostic testing revealed that Mr. Noon had degenerative disc disease and facet arthropathy which were not related to his compensable injury. The Office of Judges found that Dr. Cottrell, Mr. Noon's treating physician, confirmed that Mr. Noon had a degenerative condition which was affecting his right lower extremity. The Office of Judges further found that Dr. Cottrell did not specify whether the requested treatment related to Mr. Noon's compensable injury. The Office of Judges concluded that Mr. Noon's current complaints of pain and right leg weakness were related to his pre-existing condition and not his compensable injury. 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. Noon has not presented sufficient evidence to show that the requested additional chiropractic treatment and neurological consultation are medically related and reasonably necessary to treat his compensable condition. The record shows that Mr. Noon has reached the maximum degree of medical improvement from his compensable injury. Although his leg frequently gives out and he is experiencing pain, there is nothing in the record to relate these symptoms to his compensable injury. The evidence in the record, including the treatment notes of Mr. Noon's own physician, shows that Mr. Noon's need for the requested treatments is related to his pre-existing and non-compensable degenerative disc disease.

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 Menis E. Ketchum

Justice Allen H. Loughry II

Justice Brent D. Benjamin, not participating