

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

GEORGE VANCE,
Claimant Below, Petitioner

vs.) **No. 12-0670** (BOR Appeal No. 2046615)
(Claim No. 2010112506)

SPARTAN MINING COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner George Vance, by Reginald Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Spartan Mining Company, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 2, 2012, in which the Board affirmed a November 10, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 3, 2011, decision denying Mr. Vance's request for a permanent partial disability evaluation of the chest wall and/or cervical spine. 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. Vance was injured during a rock fall on October 29, 2009, while working as an underground coal miner. He sought treatment immediately after the incident at Charleston Area Medical Center's emergency room. When he arrived in the emergency room, his only complaint was left lower rib pain. Diagnostic imaging of Mr. Vance's head, cervical spine, chest, thoracic spine, abdomen, lumbar spine, and pelvis was obtained and revealed a subarachnoid hemorrhage and an L1-2 compression fracture. After receiving treatment in the emergency room, Mr. Vance was admitted to the hospital under Dr. Armbrust's service. Dr. Armbrust noted that Mr. Vance

had received an extensive diagnostic workup during which the only injuries identified were to his head and lumbar spine. Subsequently, the claims administrator held Mr. Vance's claim compensable for closed lumbar vertebra fracture and subarachnoid hemorrhage. Chest pain was specifically denied as a compensable component of the claim. On July 7, 2010, Mr. Vance requested that Dr. Armbrust evaluate his chest and neck. Dr. Armbrust found some tenderness over the left ribcage and moderately limited range of motion in the neck. An independent medical evaluation was performed by Dr. Mukkamala on May 28, 2010. Dr. Mukkamala noted that Mr. Vance complained of lower back stiffness and some left-sided rib pain. He declined to assign an impairment rating for the cervical and thoracic regions. On January 3, 2011, the claims administrator denied Mr. Vance's request for a permanent partial disability evaluation of his chest wall and/or cervical spine. On July 6, 2011, Dr. Condaras performed a second independent medical evaluation and found that Mr. Vance sustained no permanent impairment to his ribs or chest wall as a result of the October 29, 2009, injury. He also found that Mr. Vance did not sustain a neck injury on October 29, 2009.

In its Order affirming the January 3, 2011, claims administrator's decision, the Office of Judges held that Mr. Vance is not entitled to a permanent partial disability evaluation for the chest wall and/or the cervical spine, which are not compensable components of the claim. Mr. Vance disputes this finding and asserts that the evidence of record demonstrates that he injured his chest wall and cervical spine on October 29, 2009, and that he is therefore entitled to a permanent partial disability evaluation for those body parts.

The Office of Judges found that the chest wall and cervical spine are not compensable components of the claim, and noted that the claims administrator has specifically denied the compensability of chest pain. The Office of Judges further found that Mr. Vance requested that Dr. Armbrust complete a diagnosis update form to include the chest wall and cervical spine, but he never completed the form as requested. Additionally, the Office of Judges found that it is clear from the medical record that Mr. Vance's chest and neck were investigated as sites of possible injury in the aftermath of the accident. Finally, the Office of Judges noted that neither Dr. Mukkamala nor Dr. Condaras diagnosed Mr. Vance with a neck or chest wall condition, and found that their conclusions support the denial of Mr. Vance's request for a permanent partial disability evaluation of the chest wall and/or cervical spine. The Board of Review reached the same reasoned conclusions in its decision of May 2, 2012. We agree with the reasoning and conclusions of the Board of Review.

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 Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, disqualified