

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

April 12, 2016

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

**CHARLES R. ADKINS,**  
**Claimant Below, Petitioner**

vs.) **No. 15-0561** (BOR Appeal No. 2049788)  
(Claim No. 2013022455)

**WEST VIRGINIA DIVISION OF NATURAL RESOURCES,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Charles R. Adkins, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Division of Natural Resources, by Lisa Warner Hunter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 12, 2015, in which the Board affirmed an August 22, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 23, 2013, decision closing Mr. Adkins's claim on a temporary total disability basis with an effective date of October 12, 2013. 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. Adkins was injured on February 20, 2013, while he was operating a piece of equipment that malfunctioned. His claim for workers' compensation benefits was held compensable for a right shoulder sprain, a cervical sprain, a thoracic sprain, and a lumbar sprain. Following the compensable injury, Mr. Adkins began treating with Allen Young, M.D., who noted that Mr. Adkins has a significant history of prior right shoulder injuries. Dr. Young opined that the results of a post-injury MRI, which revealed tendinopathy of the supraspinatus tendon with mild subacromial/subdeltoid bursitis, warranted a referral for an orthopedic consultation.

Pursuant to Dr. Young's recommendation, Mr. Adkins was referred to orthopedic surgeon George Bal, M.D., who recommended and later performed a right shoulder arthroscopy with a capsular release/manipulation under anesthesia and a biceps tenolysis for the treatment of adhesive capsulitis of the right shoulder.<sup>1</sup>

At issue in the instant appeal is Mr. Adkins's request for additional temporary total disability benefits. Dr. Young has provided Mr. Adkins with numerous notes indicating that he should be excused from his occupational duties, with the most extensive time frame being from February 20, 2013, through January 23, 2014.<sup>2</sup> Prasadarao Mukkamala, M.D., performed an independent medical evaluation on June 20, 2013, and opined that Mr. Adkins has reached maximum medical improvement and requires no further treatment with respect to the compensable sprains sustained on February 20, 2013. Following the issuance of his independent medical evaluation report, Dr. Mukkamala submitted three supplemental reports in which he reiterated his conclusion that Mr. Adkins has reached maximum medical improvement with respect to the compensable sprains. He further opined that Mr. Adkins is capable of returning to work.

On October 23, 2013, the claims administrator closed Mr. Adkins's claim on a temporary total disability basis with an effective date of October 12, 2013. Following the claims administrator's decision, David Soulsby, M.D., performed a records review. He opined that the only injuries Mr. Adkins sustained on February 20, 2013, are the sprains/strains which have already been held compensable. Dr. Soulsby also concluded that Mr. Adkins has reached maximum medical improvement with respect to the compensable sprains/strains.

In its Order affirming the October 23, 2013, claims administrator's decision, the Office of Judges held that Mr. Adkins has failed to demonstrate that he is entitled to additional temporary total disability benefits. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated May 12, 2015. On appeal, Mr. Adkins asserts that the evidentiary record clearly demonstrates that he is entitled to additional temporary total disability benefits.

As was previously noted, the only compensable conditions in the instant claim are sprains/strains. The denial of the authorization for the right shoulder surgery performed by Dr. Bal, the recovery time for which is presumably the basis for Mr. Adkins's request for additional temporary total disability benefits, has been affirmed by this Court in a prior memorandum decision, in which we determined the need for the right shoulder arthroscopy does not arise from the compensable February 20, 2013, injury.<sup>3</sup> West Virginia Code § 23-4-7a (2005) states that

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<sup>1</sup> In *Adkins v. W. Va. Div. of Nat. Res.*, No. 15-0560 (W. Va. Supreme Court, April 12, 2016, memorandum decision) this Court affirmed the denial of Mr. Adkins's request for authorization of this surgical procedure.

<sup>2</sup> Despite the fact that the last date for which Dr. Young provided Mr. Adkins with a work excuse is January 23, 2014, on appeal Mr. Adkins is requesting that he receive temporary total disability benefits through March 31, 2014.

<sup>3</sup> See *supra* note 1.

temporary total disability benefits are not payable after a claimant has reached maximum medical improvement, is released to return to work, or actually returns to work, whichever occurs first. Both Dr. Mukkamala and Dr. Soulsby opined that Mr. Adkins has reached maximum medical improvement regarding the compensable sprains. Therefore, as was determined by the Office of Judges, the claims administrator acted properly in closing the claim on a temporary total disability basis.

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: April 12, 2016**

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Allen H. Loughry II