

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

TONYA WATSON,
Claimant Below, Petitioner

vs.) **No. 19-0075** (BOR Appeal No. 2053180)
(Claim No. 2018010491)

THE HOMER LAUGHLIN CHINA COMPANY,
Employer Below, Respondent

FILED

January 24, 2020
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Tonya Watson, by Counsel James T. Carey, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). The Homer Laughlin China Company, by Counsel Lucinda L. Fluharty, filed a timely response.

The issue on appeal is medical benefits. The claims administrator denied authorization of a hip arthroscopy, PACC testing, labs, an EKG, and pre-operative therapy on March 13, 2018. The Office of Judges affirmed the decision in its July 11, 2018, Order. The Order was affirmed by the Board of Review on January 3, 2019.

The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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.

Ms. Watson, a pottery worker, was injured in the course of her employment on October 18, 2017, when she tripped over a chair. The Employees' and Physicians' Report of Injury indicates Ms. Watson injured her right hip and lower back. The claim was held compensable for lumbar strain and right hip contusion on November 3, 2017. A right hip MRI was performed on November 17, 2017, and showed no acute injury. However, it did show a suspected tear of the right anterior superior acetabular labrum. A right hip MR arthrogram was performed on December 13, 2017, for a suspected labral tear. The examination was unremarkable and showed no labral tear.

Ms. Watson sought treatment from James Rosneck, M.D., at the Cleveland Clinic, on January 9, 2018. The treatment note indicates Ms. Watson underwent physical therapy but saw no improvement. Dr. Rosneck diagnosed a right hip labral tear. He prescribed medication and steroid injections if the medication did not work. On January 11, 2018, Ms. Watson saw Joseph DiDomenico, D.O., for right hip and lower back pain. He noted that Dr. Rosneck opined that Ms. Watson's arthrogram placement was not intraarticular and recommended a hip injection. Dr. DiDomenico also noted that Ms. Watson had right hip pain with activity. Dr. DiDomenico assessed right hip pain with labral tear. The diagnoses were listed as lumbar strain, right hip muscle strain, and right hip contusion.

A January 17, 2018, treatment note by Pam Smith, N.P., and Thomas Gemma, M.D., indicates Ms. Watson was seen for pain management. It was noted that she underwent physical therapy that helped her back pain but not her hip pain. Ms. Watson was to return to physical therapy for the hip. She was also to be scheduled for a right intra-articular hip injection. The assessments were strain of the fascia and tendon of the right hip and right hip contusion. Ms. Watson underwent a right hip injection on January 23, 2018.

A January 30, 2018, telephone record by the Cleveland Clinic indicates Ms. Watson called and stated that her hip injection did not work. She was told that she was a surgical candidate. Ms. Watson spoke with Dr. Rosneck and approval for surgery was requested. The claims administrator denied authorization of a hip arthroscopy, PACC testing, labs, an EKG, and pre-operative therapy on March 13, 2018.

Ms. Watson testified in a deposition on June 4, 2018, that she tripped over a chair and fell onto her right hip at work. She stated that though her MRI and MR arthrogram were negative for a labral tear, Dr. Rosneck told her that she definitely has a tear. He told her that the dye for the arthrogram was not injected into the correct spot, which is why the tear did not show up. Dr. Rosneck recommended surgery to fix the tear. Ms. Watson testified that she is still working and is awaiting surgical approval.

On June 11, 2018, Victoria Langa, M.D., performed a record review in which she noted the accepted conditions in the claim are lumbar sprain and right hip contusion. Dr. Langa stated that the MR arthrogram report states that the dye was intra-articular. She opined that the labral tear was not seen on MR arthrogram and was not described at the time of the intra-articular steroid injection. She found no convincing evidence that Ms. Watson actually has a labral tear of the right hip.

The Office of Judges affirmed the claims administrator's denial of authorization of a hip arthroscopy, PACC testing, labs, an EKG, and pre-operative therapy in its July 11, 2018, Order. It found that the claim is compensable for lumbar strain and right hip contusion. Ms. Watson currently requests authorization for surgery for a labral tear, which is not a compensable condition in the claim. The Office of Judges found that the MR arthrogram showed no sign of a labral tear, and Dr. Rosneck made no mention in his treatment record that he disagreed with the MR arthrogram. He made no mention of the arthrogram at all. Ms. Watson testified that Dr. Rosneck informed her that the dye was not properly injected for the arthrogram; however, Dr. Rosneck

made no note of this in any of his medical records. The Office of Judges found that Dr. Langa's record review was persuasive. Dr. Langa noted that Ms. Watson stated she was told the dye was improperly injected for the MR arthrogram; however, that was in direct conflict with the MR arthrogram report itself, which indicated the dye injection was intra-articular. The Office of Judges determined that Dr. Langa reviewed Dr. Rosneck's treatment note and found no indication that he reviewed the MR arthrogram. Ms. Watson underwent an intra-articular corticosteroid injection in the right hip, and Dr. Langa found no mention of findings suggestive of a labral tear. She noted that Ms. Watson was given the injection for both pain control and diagnostic purposes. Dr. Langa concluded that there is no convincing evidence that she has a labral tear in her right hip. Therefore, the requested surgery should not be authorized. The Office of Judges concluded that the requested treatment should not be authorized. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on January 3, 2019.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. West Virginia Code § 23-4-3(a)(1) (2019) provides that the claims administrator must provide medically related and reasonably required sums for healthcare services, rehabilitation services, durable medical and other goods, and other supplies. A preponderance of the evidence fails to show that Ms. Watson has a right hip labral tear. More importantly, the requested medical treatment is clearly to treat a right hip labral tear, which is not a compensable condition in this claim. The requested medical treatment was properly denied.

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 24, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison