

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MURRAY AMERICAN ENERGY, INC.,
Employer Below, Petitioner

vs.) **No. 21-0127** (BOR Appeal No. 2055482)
(Claim No. 2017006695)

LEONARD BRADFORD,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Murray American Energy, Inc., by Counsel Aimee M. Stern, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Leonard Bradford, by Counsel M. Jane Glauser, filed a timely response.

The issue on appeal is additional compensable conditions. On December 9, 2019, the claims administrator denied the addition of dozens of conditions to the claim. The Workers' Compensation Office of Judges ("Office of Judges") reversed the decision, in part, and remanded the case with instructions to hold all of the conditions compensable except for depression¹ and those involving the right shoulder and neck/cervical spine, in its July 2, 2020, Order. The Order was affirmed by the Board of Review on January 21, 2021.

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.

The standard of review applicable to this Court's consideration of workers' compensation appeals has been set out under W. Va. Code § 23-5-15, in relevant part, as follows:

¹Though depression was not included in the claims administrator's December 9, 2019, decision, the Office of Judges addressed the condition in its Order because counsel for Mr. Bradford argued before the Office of Judges that the condition should be included in the claim.

(c) In reviewing a decision of the Board of Review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning, and conclusions

(e) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo reweighing of the evidentiary record

See Hammons v. W. Va. Off. of Ins. Comm'r, 235 W. Va. 577, 582-83, 775 S.E.2d 458, 463-64 (2015). As we previously recognized in *Justice v. West Virginia Office Insurance Commission*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012), we apply a de novo standard of review to questions of law arising in the context of decisions issued by the Board. *See also Davies v. W. Va. Off. of Ins. Comm'r*, 227 W. Va. 330, 334, 708 S.E.2d 524, 528 (2011).

Mr. Bradford, a coal miner, was injured when he was struck in the left side of the face/head by a steel pipe at work on September 12, 2016. A STAT MedEvac Patient Record noted that day that Mr. Bradford was hit in the left side of the face by a steel pipe that was being moved by a machine. He lost consciousness multiple times and was transferred to UPMC Presbyterian for trauma treatment. The UPMC Presbyterian Emergency Department treatment records indicate Mr. Bradford suffered significant facial trauma after being struck by a steel pipe. Mr. Bradford sustained fractures to his frontal sinus, including both anterior and posterior walls, with depressed fracture fragments; pneumocephalus; small amounts of left frontal extraaxial hemorrhage; bilateral nasoorbitoethmoidal complex fractures; fractures of the orbital walls; a left ZMC fracture; nasal bone and septal fractures; a left retrobulbar hematoma; left medial rectus muscle injury; and complex anterior skull base fractures. Mr. Bradford underwent a craniotomy and was discharged on September 21, 2016. The claim was held compensable for fracture of skull and facial bones on December 15, 2016.

On January 10, 2017, Jenny Yu, M.D., treated Mr. Bradford for ptosis of the left eyelid. On March 21, 2017, Mr. Bradford sought treatment from Luke Henry, Ph.D., a neuropsychologist, where he reported slow cognitive processing and impaired memory since his injury. Dr. Henry diagnosed traumatic brain injury. Testing showed largely average cognitive ranges. Dr. Henry opined that there was no neuropsychological reason that Mr. Bradford could not return to work. Mr. Bradford underwent a head CT scan on April 6, 2017, which showed continued maturation of his extensive craniofacial fractures.

Glenn Goldfarb, M.D., performed an Independent Medical Evaluation on August 2, 2017, in which he found that Mr. Bradford had reached maximum medical improvement. He found 10% facial impairment and 3% impairment for loss of smell for a total of 13% impairment. In an August

17, 2017, letter, David Okonkwo, M.D., stated that Mr. Bradford had made a remarkable recovery from his injury and could return to work.

Bernard Costello, M.D., began treating Mr. Bradford for the compensable injury on November 17, 2017. Dr. Costello noted that he was doing well but still had some epiphora. In an April 8, 2018, Diagnosis Update, Dr. Costello requested the addition of LeFort III fractures, orbit fractures, nasal fractures, and frontal sinus fractures to the claim. Mr. Bradford filed a Petition to Update Diagnoses on April 23, 2018, with the claims administrator. In an April 27, 2018, letter to Dr. Costello, the claims administrator noted that the currently accepted diagnosis in the claim was fracture of skull and facial bones. The claims administrator requested that Dr. Costello review the case and opine if any additional diagnoses should be added.

Mr. Bradford filed a Petition to Update Diagnoses and submitted additional evidence in support on May 4, 2018. On May 10, 2018, the claims administrator added Lefort III fractures, orbit fractures, nasal fractures, and frontal sinus fractures to the claim. Mr. Bradford protested the decision to the Office of Judges because the claims administrator's decision did not address all of the requested additional conditions. In a January 18, 2019, Order, the Office of Judges reversed and remanded the May 10, 2018, decision to the claims administrator with instructions to determine the compensable conditions. The Office of Judges granted a Motion to Remand to allow the claims administrator to consider the newly submitted evidence on July 5, 2018.

In an August 22, 2018, Independent Medical Evaluation, Dr. Goldfarb found that Mr. Bradford had not reached maximum medical improvement. He noted that Mr. Bradford complained of loose teeth and had an upcoming appointment with his facial surgeon. Dr. Goldfarb opined in a February 12, 2019, letter that facial deformities, blurred and double vision looking to the left, headaches, left eye irritation, left forehead numbness, and teeth on the left side of the mouth feeling loose were all the result of the compensable injury. On February 19, 2019, Dr. Goldfarb listed Mr. Bradford's diagnoses as facial deformity, eyeball misalignment, blurred vision, diplopia, headaches, left eye irritation, left forehead numbness, and loosened teeth.

On February 22, 2019, the claims administrator added the following conditions to the claim: other acquired deformity of head, unspecified disorder of the eye and adnexa, other facial disturbances, diplopia, headaches, left eye ocular pain, paresthesia of the skin, and other specified disorders of teeth and supporting structures.

In a July 15, 2019, letter, Dr. Goldfarb listed Mr. Bradford's injury-related conditions as other acquired deformity of the head; unspecified disorder of the eye and adnexa; other facial disturbances; diplopia; headaches; left eye ocular pain; paresthesia of the skin; other specified disorders of teeth and supporting structures; fracture of the skull and facial bones; LeFort III fractures; orbit fractures; nasal fractures; and sinus fractures. He further stated that Mr. Bradford developed the following conditions as a result of the compensable injury: concussion, post-concussion syndrome, traumatic brain injury, left eye elphora, left enophthalmos, facial scarring, loss of taste, and skin sensitivity. Dr. Goldfarb opined that traumatic mydriasis of the left eye, commotio retinae, and left hand swelling should not be added to the claim.

The claims administrator denied the addition of the following conditions to the claim on December 9, 2019: unspecified head injury; other symptoms involving cognitive functions; shortness of breath; unspecified multiple injuries; basophilia; accidental puncture and laceration of unspecified eye and adnexa during ophthalmic procedure; contusion of other parts of the head; unspecified skull fracture; unspecified face injury; laceration with foreign body other parts of head; other fractures of base of skull; other specified intracranial injury with loss of consciousness; other cause of struck by thrown or projected falling object; concussion with loss of consciousness; striking against or striking other objects; activity, other specified; unspecified place or not applicable; fractures of vault of skull; unspecified focal traumatic brain injury without loss of consciousness; unspecified injury of neck; unspecified injury of thorax; unspecified fractures of base of skull; unspecified fracture of facial bones; fractures of nasal bones; fractures of orbital floor; unspecified fractures of skull; fractures of vault of skull, subsequent encounter; other specified complications of surgical and medical care; fractures of other specified skull facial bones; dislocation of unspecified ankle joint; unspecified open wound of outer part of head; unspecified injury of neck; unspecified asthma; pain in right shoulder; injury, unspecified; unspecified injury of face; contusion of other parts of head; nontraumatic subdural hemorrhage; other specific disorder of the brain; contusion and laceration of cerebrum; fractures of orbital floor, subsequent encounter; fractures of vault of skull, subsequent encounter; fractures of other specified skull and facial bones, left side; traumatic mydriasis left eye; unspecified ptosis of left eyelid; post-concussion syndrome; inflammatory condition of jaw; other injuries of left eye and orbit; unspecified intracranial injury; infection and inflammatory reaction; surgical procedure, unspecified, causing abnormal reaction; presence of artificial eye; personal history of other physical injury and trauma; and other specified post procedural status.

In its July 2, 2020, Order, the Office of Judges reversed the decision, in part, and remanded the case with instructions to hold all the conditions compensable except for those involving depression, the right shoulder, and the neck/cervical spine. The Office of Judges found that the claims administrator's denial was based on reports by Dr. Goldfarb. In his February 12, 2019, report, Dr. Goldfarb opined that facial deformities, blurred and double vision looking to the left, headaches, left eye irritation, left forehead numbness, and teeth on the left side of the mouth feeling loose were all the result of the compensable injury. In a July 15, 2019, letter, Dr. Goldfarb listed Mr. Bradford's injury-related conditions as other acquired deformity of the head; unspecified disorder of the eye and adnexa; other facial disturbances; diplopia; headaches; left eye ocular pain; paresthesia of the skin; other specified disorders of teeth and supporting structures; fracture of the skull and facial bones; LeFort III fractures; orbit fractures; nasal fractures; and sinus fractures. He further stated that Mr. Bradford developed the following conditions as a result of the compensable injury: concussion, post-concussion syndrome, traumatic brain injury, left eye enophthalmos, facial scarring, loss of taste, and skin sensitivity. Dr. Goldfarb opined that traumatic mydriasis of the left eye, commotio retinae, and left hand swelling should not be added to the claim.

The Office of Judges noted that the employer argued that many of the diagnoses were redundant. The Office of Judges agreed but found that the employer failed to provide sufficient evidence to determine which of the diagnoses specifically are repetitive. It concluded that the inclusion of repetitive diagnoses did no harm. The employer also argued that Mr. Bradford failed

to show that cervical or shoulder injuries resulted from the compensable injury. The Office of Judges found that though Mr. Bradford underwent cervical and shoulder x-rays at the time of the injury, there is no additional evidence of treatment or diagnoses for the two body parts.

Regarding depression, the Office of Judges found that counsel for Mr. Bradford noted in her closing argument that depression is a potential symptom of post-concussion syndrome, a compensable condition in the claim. However, the Office of Judges determined that there was no medical evidence to support the diagnosis, and depression was not listed in the December 9, 2019, claims administrator decision at issue. The condition therefore could not be added to the claim. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on January 21, 2021.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The standard for the addition of compensable diagnoses is the same as for compensability. Pursuant to West Virginia Code § 23-4-1, employees who receive injuries in the course of and as a result of their covered employment are entitled to benefits. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). Mr. Bradford sustained a catastrophic injury to his face and head when he was struck by a steel pipe. He sustained numerous injuries and has been diagnosed with dozens of conditions. Mr. Bradford has shown by a preponderance of the evidence that the requested conditions should be added to the claim, with the exception of those related to depression, the cervical spine, and the shoulder.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton
Justice C. Haley Bunn