

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

JAMES BOLES,
Claimant Below, Petitioner

vs.) No. 21-0221 (BOR Appeal No. 2055621)
(Claim No. 2019000728)

BLACKHAWK MINING,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner James Boles, by counsel J. Robert Weaver, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Blackhawk Mining, by counsel Sean Harter, filed a timely response.

The issue on appeal is compensability. The claims administrator rejected the claim on June 11, 2018. On July 29, 2020, the Workers' Compensation Office of Judges ("Office of Judges") affirmed the claims administrator's decision. This appeal arises from the Board of Review's Order dated February 19, 2021, in which the Board affirmed the Order of the Office of Judges.

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.

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:

(b) 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.

(c) If the decision of the board represents an affirmation of a prior ruling by both the commission and 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 provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing 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. Boles, a plant technician, presented to Charleston Area Medical Center on May 13, 2018, with an alleged abdominal injury. He reported that he was welding approximately January 2, 2018, when a hot piece of metal fell on his shirt. He claimed that he received a superficial abdominal wound. Earlier in the day, he was gathering clothes out of the dryer when he sneezed and noticed he had bowel contents coming out of his wound. He was rushed by ambulance to Charleston Area Medical Center where he came under the care of Benjamin Dyer, M.D., and admitted with an enterocutaneous fistula. He remained in the hospital from May 13, 2018, until he was released on July 21, 2018. During his hospitalization, Mr. Bowles underwent six separate surgical procedures.

An Employees' and Physicians' Report of Occupational Injury was completed by Mr. Boles on May 29, 2018, and Dr. Dyer completed the physician's portion of the form on June 6, 2018. Dr. Dyer indicated that he sustained an occupational injury and advised him to remain off work from May 13, 2018, until November 13, 2018. He described the injury as an enteroatmospheric fistula, with a diagnostic code of enterocutaneous fistula. By Order of the claims administrator dated June 11, 2018, the claim was rejected. It was noted that the application received dated June 6, 2018, diagnosing him with enterocutaneous fistula lacked supporting medical documentation that a work-related injury had occurred on January 2, 2018. Mr. Boles timely protested the claims administrator's decision.

Mr. Boles testified by telephone deposition on January 10, 2019, in support of his protest. He testified that he informed Dr. Dyer about the hot slag that burnt through his shirt and into his abdomen. He also testified about his previous trauma that resulted in the loss of his abdominal wall when he was involved in a motor vehicle accident on October 14, 1988. He stated that he was the passenger in a Chevy Chevette when the transmission came through the floorboard and struck him in his abdomen and stomach area. He sustained injuries to his abdomen, as well as his upper and lower bowels. He was off work for over a year following the car wreck. However, after being released to return to work, he did not have any additional follow-up medical care for the injuries he sustained from the car wreck. At the time of his deposition, he still had part of his

bowels outside of his stomach due to concerns of infection/sepsis. Mr. Boles testified that he has not been hospitalized since he was discharged on July 21, 2018.

Deposition testimony of Dr. Dyer, dated March 13, 2019, was presented by Mr. Boles in support of his claim. Dr. Dyer is board certified in both general surgery and colorectal surgery. Dr. Dyer testified that due to the motor vehicle accident in the late 1980's, Mr. Boles had developed a very dense adhesive disease in his abdomen which caused a loss of feeling in the abdominal wall, which would explain why he did not feel the piece of hot slag that burned through his shirt and into his abdomen. Dr. Dyer concluded his testimony by stating that the cause of Mr. Boles's enteroatmospheric fistula was multi-factorial, which would include the abdominal injury when he was burned by a hot slag at work on January 2, 2018, the incident when he sneezed while bending over to get clothes out of the dryer, and the 1988 motor vehicle accident in which he sustained severe abdominal injuries.

Mr. Boles underwent an Independent Medical Evaluation with Prasadarao B. Mukkamala, M.D., on December 9, 2019. It was noted that from January 2, 2018, until May 13, 2018, he had no symptoms. The diagnosis was enterocutaneous fistula developed from complications from an older injury sustained from an automobile accident on October 14, 1988. Dr. Mukkamala opined that it is his professional opinion that there is no objective, credible medical evidence that he sustained an injury in the course of and resulting from his work activities on January 2, 2018. Instead, the cause of the enterocutaneous/enteroatmospheric fistula was weakness of the abdominal wall and the fistula resulted from prior surgeries in 1988.

In a February 28, 2020, Independent Medical Evaluation report from Marsha L. Bailey, M.D., Dr. Bailey agreed with the conclusion of Dr. Mukkamala that Mr. Boles did not sustain an injury in the course of or resulting from his employment on January 2, 2018. Dr. Bailey opined that the diagnosis of an enterocutaneous fistula and or enteroatmospheric fistula is solely the result of his activities of daily living, specifically, bending and sneezing while removing clothes from his dryer on May 13, 2018. Dr. Bailey stated that Mr. Boles unfortunately experienced a perfect storm of events. She concluded that he had an already weakened abdominal wall that simply gave away under the increased intraabdominal pressure caused by a Valsalva maneuver when Mr. Boles bent over to get his clothes out of his dryer and suddenly sneezed. After examining the mechanism of injury surrounding the work incident of January 2, 2018, Dr. Bailey concluded that the mechanism of injury is not of the magnitude that would result in a perforation of Mr. Boles's abdominal skin and rupture his bowel. If he had, he would have grown acutely ill within hours. Instead, Mr. Boles continued to work full time, unrestricted for over four months. Dr. Bailey found that the Bradford Hill criteria for causation is not satisfied in regard to a causal nature between Mr. Boles's work incident of January 2, 2018, and his enterocutaneous fistula.

In an Order dated July 29, 2020, the Office of Judges affirmed the June 11, 2018, claims administrator's rejection of the claim. The Office of Judges concluded that a preponderance of the credible evidence, both medical and otherwise, fails to establish the compensability of the claim. Although the Office of Judges noted Dr. Dyer's superior expertise upon the issue in question, it was found that the findings suggested by Drs. Mukkamala and Bailey represent the most accurate assessment regarding etiology of Mr. Boles's present medical condition. The

Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on February 19, 2021.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Although Dr. Dyer testified that Mr. Boles's enterocutaneous fistula was the result of multifactorial issues; however, he could not state to a reasonable degree of medical certainty that the condition was attributable to an occupational incident. The Office of Judges correctly determined that Dr. Dyer's opinion does not constitute a sufficient statement of medical certainty necessary to establish compensability of the claim.

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