

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**LARRY J. SHEPHERD,**  
**Claimant Below, Petitioner**

vs.) **No. 21-0226** (BOR Appeal No. 2055702)  
(Claim No. 2017007575)

**CORNERSTONE INTERIORS, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Larry J. Shepherd, by Counsel Patrick K. Maroney, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Cornerstone Interiors, Inc., by Counsel Lisa Warner Hunter, filed a timely response.

The issue on appeal is medical benefits. The claims administrator denied authorization of lumbar facet injections on July 25, 2019. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decision in its March 13, 2020, Order. The Order was affirmed by the Board of Review on February 22, 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:

(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 . . . .

(d) 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 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. Shepherd, a drywall finisher, fell and injured his neck and lower back in the course of his employment on August 10, 2016. Mr. Shepherd has a history of cervical and lumbar spine issues. On January 23, 2013, a lumbar x-ray was performed for lower back pain. It showed multilevel degenerative disc disease; lower lumbar facet hypertrophy; bilateral sacroiliac degenerative joint disease; and mild chronic anterior wedging of T11, T12, and L1. A cervical MRI was performed on November 9, 2013, for neck pain, right arm pain, and C7 radiculopathy. It revealed C3-4 disc bulge with osteophyte disc complex and foraminal stenosis mild disc bulging at C4-5 and C5-6, and borderline canal stenosis from C3-C6.

On the day of the compensable injury, a lumbar x-ray was performed and showed multilevel degenerative arthritis and no acute injury. A cervical x-ray showed multilevel degenerative disc disease and hypertrophy with neural foraminal narrowing. It was noted that Mr. Shepherd had a history of radiculopathy, carpal tunnel syndrome, and chronic lumbar pain. The claim was held compensable for lower back strain and cervical sprain on October 3, 2016.

In an April 17, 2018, treatment note, Francis Saldanha, M.D., noted that Mr. Shepherd injured his back and neck in August of 2016. Mr. Shepherd returned to work but still had pain. In February of 2017, he fell off of a ladder and reinjured his neck and back, as well as his right shoulder. Mr. Shepherd reported pain in his neck and shoulders, as well as his lower back. He had not returned to work since his February of 2017 injury. Dr. Saldanha diagnosed cervical strain, lumbar strain, cervical facet syndrome, and lumbar facet syndrome. He requested authorization for physical therapy as well as facet and trigger point injections of the lumbar and cervical spine. Dr. Saldanha administered L4-5 and L5-S1 lumbar facet joint injections on June 25, 2018. On July 13, 2018, he administered C6-7 and C7-T1 cervical facet joint injections.

Paul Bachwitt, M.D., performed an Independent Medical Evaluation on March 4, 2019, in which he noted that Mr. Shepherd underwent x-rays on August 10, 2016, which showed no evidence of acute injury but did reveal multilevel degenerative disease. Mr. Shepherd sustained a second injury on February 2, 2017, to his neck, back, and bilateral arms. After examination, Dr. Bachwitt opined that Mr. Shepherd had reached maximum medical improvement and required no

further treatment for his compensable lumbar and cervical sprains. Dr. Bachwitt noted that Mr. Shepherd had previously undergone injections, and they failed to provide any significant, lasting pain relief.

In a March 15, 2019, treatment note, Dr. Saldanha noted that Mr. Shepherd reported that injections helped his pain. Dr. Saldanha agreed with Dr. Bachwitt's finding of maximum medical improvement; however, he stated that such finding does not preclude further treatment. His diagnoses were cervical and lumbar strains, degenerative disc disease, and facet arthropathy. The claims administrator denied authorization for lumbar facet injections on June 14, 2019. On July 25, 2019, the claims administrator again denied authorization of lumbar facet injections.

Mr. Shepherd testified in an October 18, 2019, deposition that he had previously received lumbar facet injections for low back pain. He asserted that the injections provided temporary relief of his sharp back pain and increased his functioning. Mr. Shepherd stated that his low back pain had worsened since his evaluation by Dr. Bachwitt.

The Office of Judges affirmed the claims administrator's denial of authorization of lumbar facet injections in its March 13, 2020, Order. It found that Dr. Saldanha's request for lumbar facet injections was not submitted into the record. The most recent medical evidence was his March 15, 2019, treatment note, which does not contain a request for lumbar facet injections. The Office of Judges concluded that lumbar facet injections could not be authorized because Mr. Shepherd failed to show that they are medically necessary and reasonably required treatment for a compensable injury. The Office of Judges noted that Dr. Saldanha's diagnoses were lumbar strain, cervical strain, degenerative disc disease, and facet arthropathy. The claim has only been held compensable for cervical and lumbar sprains. The Office of Judges found no evidence that the requested treatment was necessary for the compensable conditions. Dr. Bachwitt stated in his evaluation that Mr. Shepherd required no further treatment. The Office of Judges concluded that his opinion was supported by West Virginia Code of State Rules § 85-20-37.5, which provides that the duration of care for a lumbar sprain should not exceed eight weeks. The statute further provides that there are extraordinary cases that require additional care. The Office of Judges found no evidence that this is such a case. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on February 22, 2021.

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) 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 indicates that lumbar facet injections are not reasonable, necessary treatment for Mr. Shepherd's compensable lumbar sprain.

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