

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CURTIS D. WADE, Petitioner

vs.) **No. 101558 (BOR Appeal No. 2044469)**
(Claim No. 2009071391)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA DIVISION OF HIGHWAYS,
Respondent**

MEMORANDUM DECISION

Petitioner, Curtis D. Wade, by Samuel F. Hanna, appeals the Board of Review Order affirming the denial of cervical spondylosis, cervical herniation, thoracic herniation, and cervical nerve root injury as compensable components of his claim. The West Virginia Division of Highways, by Nathaniel A. Kuratomi, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 8, 2010, in which the Board affirmed an April 2, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 6, 2010, Order, which denied the addition of cervical spondylosis, cervical herniation, thoracic herniation, and cervical nerve root injury as compensable components. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the parties' submissions and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review affirmed the Office of Judges' Order, which denied the addition of several conditions as compensable components of Mr. Wade's claim. Mr. Wade argues that the conditions should be held compensable because Dr. Sirita Bennett, Mr. Wade's treating physician, testified that each condition is related to his compensable injury. Mr. Wade sustained a right shoulder sprain / strain while clearing brush at work. Rotator cuff syndrome and sprain / strain of the shoulder / arm were also added as compensable components. Dr. Bennett testified that the requested diagnoses are related to his compensable injury because they were caused by repetitive use of Mr. Wade's upper extremity while working.

The Office of Judges noted first that Mr. Wade complained of the same symptoms that precipitated the requested diagnoses at least one year prior to his compensable injury. Further, Dr. ChuanFang Jin, who performed both a medical record review and, later, an independent medical examination, opined that the requested conditions are not related to Mr. Wade's compensable injury. Dr. Jin noted there is no epidemiologic evidence in the medical literature of repetitive motion being a risk factor for the degenerative conditions Mr. Wade seeks to add as compensable components. Further, Mr. Wade had no complaints of neck pain, which would be unusual for a traumatic disc herniation with radiculopathy, but would be normal for degenerative changes. Finally, the Office of Judges found Dr. Bennett's testimony as to causation vague and uncertain. Namely, when asked whether cervical spondylosis is related to Mr. Wade's injury, she replied only that "it certainly could be." Thus, the Office of Judges found Dr. Jin to be more credible and affirmed the denial of the additional compensable components. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 8, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the denial of Mr. Wade's request to add cervical spondylosis, cervical herniation, thoracic herniation, and cervical nerve root injury as compensable components of his claim is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh