

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**KATHY COPELAND,
Claimant Below, Petitioner**

vs.) **No. 11-1308** (BOR Appeal No. 2045693)
(Claim No. 2009095673)

**PRINCETON MEMORIAL HOSPITAL,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Kathy Copeland, by Reginald D. Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Princeton Memorial Hospital, by Jeffrey B. Brannon, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 23, 2011, in which the Board affirmed a March 7, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 2, 2009, decision closing the claim for temporary total disability benefits. The March 7, 2011, Order of the Office of Judges also affirmed the claims administrator's October 26, 2010, decision, which denied treatment requests from Dr. Zaremski and Dr. Fisher. But the Office of Judges modified the decision to authorize two additional weeks of physical therapy twice a week. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

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.

Ms. Copeland was in the employment of Princeton Community Hospital as an licensed practical nurse on June 15, 2009, when she received an injury to her back, right hip, and right leg while trying to lift a patient off the floor. She was diagnosed with a right sacroiliac region sprain, right thoracic strain, right lumbar sprain, and right gluteal strain. The claims administrator found her injury compensable for those conditions on June 26, 2009. She received various treatments

and services under this claim. On October 16, 2009, Dr. Mukkamala issued an independent medical evaluation based on his review of Ms. Copeland's claim. In his report, Dr. Mukkamala stated that Ms. Copeland had reached the maximum degree of medical improvement. Dr. Mukkamala then issued an addendum report on November 3, 2009, in which he stated that Ms. Copeland's right gluteal strain was part of her lumbar sprain. He also believed that Ms. Copeland could undergo limited physical therapy despite having reached the maximum degree of medical improvement. On December 2, 2009, the claims administrator closed Ms. Copeland's claim for temporary total disability benefits based on Dr. Mukkamala's report.

Following its December 2, 2009, decision, the claims administrator authorized various additional treatments for Ms. Copeland, including three lumbar epidural steroid injections and prolotherapy treatment provided by Dr. Zaremski. On October 11, 2010, Dr. Zaremski requested an additional four to five visits for evaluations and prolotherapy for new areas and additional evaluation and treatment by Dr. Fisher. The claims administrator denied the request on October 26, 2010. On March 7, 2011, the Office of Judges affirmed the December 2, 2009, decision of the claims administrator and modified the October 26, 2010, decision of the claims administrator, to authorize two additional weeks of physical therapy twice a week. The Board of Review affirmed the Office of Judges' Order on August 23, 2011, leading to this appeal.

The Office of Judges found that Ms. Copeland was not entitled to additional temporary total disability benefits. Although Ms. Copeland presented statements from her treating physician, Dr. Li and Dr. Zaremski, stating that she had not reached the maximum degree of improvement and that she was responsive to additional treatment, the Office of Judges was not persuaded by these opinions. The Office of Judges found that Dr. Zaremski was not aware of the workers' compensation definition of maximum medical improvement. The Office of Judges was persuaded by Dr. Mukkamala's independent medical evaluation because it was corroborated by the findings of Dr. Surface, who examined Ms. Copeland at the request of the employer.

The Office of Judges determined that the treatments requested by Dr. Zaremski and the evaluation and services of Dr. Fisher were not reasonably related to Ms. Copeland's compensable injury. It determined, however, based on the addendum to Dr. Mukkamala's independent medical evaluation, that physical therapy and occasional injections were not precluded because Ms. Copeland had reached the maximum degree of medical improvement. Based on this finding the Office of Judges modified the October 26, 2010, decision of the claims administrator to authorize an additional two weeks of physical therapy twice a week. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review. Ms. Copeland did not establish that she was entitled to additional temporary total disability benefits. The report of Dr. Mukkamala stated that Ms. Copeland had reached the maximum degree of medical improvement, which terminated her temporary total disability benefits under West Virginia Code § 23-4-7a (2005). Since Ms. Copeland has reached the maximum degree of medical improvement, the treatments and services requested by Dr. Zaremski are not reasonably related to her compensable claim. The additional two weeks of physical therapy, however, should be authorized because a preponderance of the evidence weighs in favor of finding that it was reasonably related to the June 15, 2009, injury.

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: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II