

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 7, 2015

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

**MICHAEL W. WILLS,
Claimant Below, Petitioner**

vs.) **No. 14-1279** (BOR Appeal No. 2049564)
(Claim No. 2000058859)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent**

and

**WEST VIRGINIA STEEL CORPORATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Michael W. Wills, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. West Virginia Office of the Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 24, 2014, in which the Board affirmed a June 10, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 14, 2013, decision denying a series of hip x-rays. 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.

Mr. Wills, a maintenance man, was injured in the course of his employment on May 8, 2000, while lifting steel bars. The claim was held compensable for lumbago, pain in the pelvic/thigh joint, post-laminectomy syndrome, degeneration of lumbar/lumbosacral intervertebral disc, and thoracic/lumbosacral radiculopathy. Treatment notes by Constantino Amores, M.D., from July of 2000 through May of 2001 indicate that Mr. Wills was treated for a back injury that caused pain in his lower back that radiated down the right leg and into the foot and ankle. Mr. Wills underwent a lumbar fusion and by January 5, 2001, was completely pain free. He was released to return to work with no restrictions.

Mr. Wills was treated later that year for chronic radiculitis and post-laminectomy syndrome. In an evaluation, Alfredo Velasquez, M.D., diagnosed lumbosacral muscle strain with nerve root irritation and recommended conservative management. In a December 12, 2001, independent medical evaluation, Prasadarao Mukkamala, M.D., noted that Mr. Wills reported pain in his lower back and left hip. He concluded, however, that he had reached maximum medical improvement for the compensable injury. An independent medical evaluation was also performed by Joseph Fernandez, M.D., in October of 2002. Dr. Fernandez stated that Mr. Wills reported constant dull pain in his lower back that radiated into his left hip. He opined that Mr. Wills had reached maximum medical improvement and would not benefit from further treatment other than periodic pain clinic follow-ups. He assessed 18% whole person impairment.

Mr. Wills was treated by Timothy Deer, M.D., at the Center for Pain Relief from 2001 through 2003. Dr. Deer found in 2002 that Mr. Wills had low back pain radiating into both legs, worse on the left than the right. He underwent extensive lumbar surgery but his pain worsened over time. Dr. Deer diagnosed lumbar radiculitis, lumbosacral disc disease, and post-laminectomy type complaints. Dr. Deer noted in 2003 that Mr. Wills was previously treated for lower back and left hip pain. On examination, he had decreased range of motion in his lumbar spine and decreased reflexes in his legs. He was diagnosed with post-laminectomy syndrome and bilateral radiculopathy.

The evidentiary record is devoid of medical records from 2004 through 2013, when the request for hip x-rays was made by Wilfrido Tolentino, PA-C. In his January 7, 2013, treatment note, Mr. Tolentino indicated Mr. Wills was treated for lumbar sprain/strain, post-laminectomy syndrome, and knee arthritis. At that time, Mr. Wills reported new pain in his right hip for the past month. He had a left knee arthroscopy and was doing well. Mr. Tolentino requested authorization for hip x-rays and stated that Mr. Wills may have some issues in regard to the hip joints secondary to gait disturbance caused by his left knee. Mr. Wills testified in a deposition on March 27, 2014, that he underwent surgery on his lower back to treat the compensable injury and returned to work for close to a year with no problems. He then started having pain in his lower back and left hip. He stated that he also developed pain in his left knee which was resolved with surgery. He asserted that he continues to have pain in his left hip.

The claims administrator denied the request for a series of hip x-rays on March 14, 2013. It stated that the x-rays were secondary to gait disturbance as a result of the left knee, and the denial was due to the fact that the left knee is not a compensable condition in the claim. The Office of Judges affirmed the claims administrator's decision in its June 10, 2014, Order. It

found that the claim was held compensable for lumbar sprain/strain, thoracic/lumbar radiculitis, degenerative lumbar/lumbosacral disc, post-laminectomy syndrome, pain in the pelvic/thigh joint, and lumbago. It determined that a progress note from the Center for Pain Relief stated that Mr. Wills had left knee arthritis. He had undergone a total left knee arthroplasty. Authorization for a series of hip x-rays was requested because he may have some issues secondary to the gait disturbance caused by his left knee. The Office of Judges noted that neither the hip nor the knee are compensable conditions in the claim. It was determined that it was not articulated how the hip and knee problems were related to the compensable lower back injury. The Office of Judges therefore concluded that a preponderance of the evidence failed to show that the requested hip x-rays were medically related and reasonably required to treat the compensable lower back injury. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on November 24, 2014.

On appeal, Mr. Wills asserts that the Board of Review failed to consider that the claim was held compensable for neuritis, radiculitis, and pain in the pelvic/thigh joint. He argues that the request for x-rays for pain in the pelvis/hip is clearly related to the compensable injury. The West Virginia Office of the Insurance Commissioner asserts that Mr. Wills was evaluated by two physicians and both of them concluded that he had reached maximum medical improvement and required no further treatment. It further argues that his hip pain is not related to the compensable injury.

After review, we agree with the reasoning of the Office of Judges and the conclusions of the Board of Review. The compensable injury in this case is a lower back injury. The claim has not been held compensable for either the left knee or the hips. The medical evidence indicates that Mr. Wills's left hip problems are the result of his left knee arthritis and subsequent arthroscopy, neither of which have been held to be compensable components of the claim. Additionally, Mr. Tolentino's treatment note requesting hip x-rays states that Mr. Wills reported pain in his right hip; however, in his deposition he testified that he had no problems with his right hip and that his pain was located in his left hip. Regardless, neither hip has been held to be a compensable component of the claim.

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: October 7, 2015

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum