

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

THOMAS E. RADER, Petitioner

vs.) **No. 11-0226** (BOR Appeal No. 2044697)
(Claim No. 2001031106)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
HUNTINGTON ALLOYS CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner Thomas E. Rader, by Edwin H. Pancake, appeals the decision of the West Virginia Workers' Compensation Board of Review denying authorization for medication. Huntington Alloys Corporation, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 6, 2011, in which the Board affirmed a May 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 21, 2009, order denying authorization for the medication Skelaxin. 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 petition 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.

Mr. Rader suffered a compensable cervical strain / sprain on October 18, 2000. Dr. Jerry Scott performed an independent medical examination on May 12, 2003. Dr. Scott found Mr. Rader to be at maximum medical improvement, and he concluded that Mr. Rader had been at maximum medical improvement for some time. Dr. Scott noted that Mr. Rader had a history of cervical sprain / strain predating the subject compensable injury, and he also found Mr. Rader's complaints and performance deficits to be out of proportion to the clinical findings.

Several years later, Mr. Rader's treating physician, Dr. David Caraway, submitted two requests for Skelaxin. The first, dated September 16, 2009, merely requested Skelaxin as well as the medications Neurontin, Duragesic patches, Lortab, and Naprelan. This request was denied by the claims administrator on September 21, 2009. Dr. Caraway submitted a second request for Skelaxin on November 6, 2009. At this time, Dr. Caraway stated that he "believe[s] the claimant/patient's condition is causally related to a work injury[.]" In describing why Skelaxin is medically reasonable and/or necessary, Dr. Caraway merely concludes that it "makes [Mr. Rader's] pain more tolerable."

Following the first request for Skelaxin, Dr. Benjamin Agana performed a medical record review. Like Dr. Scott, Dr. Agana noted that Mr. Rader had suffered a prior cervical spine condition in 1999. Dr. Agana also noted that Mr. Rader suffers from degenerative disc disease, progressive osteoarthritis, and disc spondylosis. Dr. Agana concluded that Mr. Rader's ongoing symptoms are likely related to these ordinary diseases of life. Dr. Agana found no indication for further treatment such as therapy, medical equipment, modalities or pain management, but he did find Naprosyn and Neurontin to be reasonable medications for Mr. Rader. Dr. Agana specifically concluded that "Skelaxin is not supported by [the Official Disability Guidelines] for muscle relaxant at this stage as they are not supported in the chronic phase of injury." This report served as the basis for the claims administrator's denial of the initial request for Skelaxin.

In affirming the claims administrator, the Office of Judges noted that Mr. Rader's compensable injury took place over nine years ago. He was found to have reached maximum medical improvement on March 12, 2003, which is defined as "a condition that has become static or stabilized during a period of time sufficient to allow optimal recovery, and one that is unlikely to change in spite of further medical or surgical therapy." West Virginia Code of State Rules § 85-20-3.9. Also, Dr. Agana found no indication for further treatment save for the medications Naprosyn and Neurontin. Dr. Agana specifically found no indication for Skelaxin.

Although Dr. Caraway stated that Mr. Rader's condition is causally related to his compensable injury, the only evidence offered in support of this conclusion is the statement that Skelaxin "makes [Mr. Rader's] pain more tolerable." This statement fails to establish that Skelaxin is related to the compensable condition and medically reasonable in light of the finding that Mr. Rader reached maximum medical improvement in 2003. Mr. Rader also suffers from ordinary diseases of life, which have been found to be the causes of Mr. Rader's symptoms.

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: November 16, 2012

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum