

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JEREMY BENDER,
Claimant Below, Petitioner

FILED
November 18, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0240** (BOR Appeal No. 2046248)
(Claim No. 2010126351)

JAN-CARE AMBULANCE SERVICE, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jeremy Bender, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Jan-Care Ambulance Service, Inc., by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 31, 2012, in which the Board affirmed an August 4, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 21, 2009, decision rejecting Mr. Bender's application for workers' compensation benefits. 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. Bender worked as an emergency medical technician for Jan-Care Ambulance Service, Inc. On February 10, 2009, he allegedly suffered an injury while carrying a patient on a stretcher with his supervisor who lost his grip on the stretcher which hit Mr. Bender in the stomach area causing pain from his groin up into his stomach. The claims administrator rejected Mr. Bender's application for workers' compensation benefits. Braxton County Memorial Hospital's records dated February 23, 2009, noted that Mr. Bender was present for a follow-up for his epididymitis, which he was previously hospitalized for at Stonewall Jackson Memorial Hospital. The University of Louisville Emergency Room's records, dated March 2, 2009, stated

that Mr. Bender had a clinical impression of epididymitis. On April 20, 2010, Dr. Patterson concluded that Mr. Bender had unspecified orchitis/epididymitis.

The Office of Judges affirmed the claims administrator's decision, and held that the claims administrator made no error in rejecting the claim. Mr. Bender disagrees and asserts that a traumatic injury occurred that was witnessed by his immediate supervisor, and was immediately reported to his supervisor. He further asserts that if he was suffering from an infection instead of testicle torsion then his symptoms and pain would not have continued after taking an antibiotic for approximately ten days.

The Office of Judges determined that there is no medical evidence supporting a diagnosis of testicular torsion. The ultrasound of the scrotum dated February 14, 2009, was unremarkable, and showed no evidence of testicular torsion. The ultrasound of the testicles dated February 25, 2009, was normal. The Office of Judges found that Mr. Bender had been diagnosed with epididymitis by Braxton County Memorial Hospital, University of Louisville Hospital, and Dr. Patterson. The Office of Judges concluded that there is no evidence that Mr. Bender's epididymitis is related to his employment, and denied his claim for compensability. The Board of Review reached the same reasoned conclusions in its decision of January 31, 2012. We agree with the reasoning and conclusions of the Board of Review.

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 18, 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