

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**DONALD L. STEWART,**  
**Claimant Below, Petitioner**

**FILED**  
December 17, 2013  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

vs.) **No. 12-0556** (BOR Appeal No. 2046433)  
(Claim No. 2002038826)

**THE HOMER LAUGHLIN CHINA COMPANY,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Donald L. Stewart, by Patrick Kevin Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Homer Laughlin China Company, by Lucinda L. Fluharty, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 2, 2012, in which the Board affirmed a September 1, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 3, 2010, decision denying Mr. Stewart's request for a greater trochanter injection. 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. Stewart worked as a die maker for Homer Laughlin China Company. On January 12, 2002, Mr. Stewart reported thoracic and lumbar pain after he suffered an injury when picking up and setting down a 130 pound die. The claim was held compensable for lumbago. Dr. Hennessey concluded that Mr. Stewart had reached maximum medical improvement on January 28, 2005, and that he had fully recovered from his lumbosacral strain. On October 20, 2010, Ms. Ahlgren requested authorization for a greater trochanter injection for Mr. Stewart's diagnosis of lumbar spinal pain with radiculopathy. Dr. Lamperski opined that Mr. Stewart's conditions are causally related to his work and that several tests and treatments should be authorized, but he did not

mention an injection to Mr. Stewart's greater trochanter. The claims administrator denied Mr. Stewart's request for a greater trochanter injection.

The Office of Judges affirmed the claims administrator's decision and held that Mr. Stewart was not entitled to authorization for a greater trochanter injection in relation to his compensable injury. Mr. Stewart disagrees and asserts that Dr. Lamperski found his low back pain and radicular pain were related to his compensable injury, and that he would benefit from an injection to his greater trochanter. Dr. Hennessey found Mr. Stewart to have reached maximum medical improvement in his report dated January 28, 2005. In a report dated January 1, 2011, Dr. Lamperski did not mention the need for a greater trochanter injection. The Office of Judges determined that the request for the greater trochanter injection was for treatment of conditions not compensable in this claim. The Office of Judges held that Mr. Stewart was not entitled to authorization for a greater trochanter injection in relation to the compensable injury of January 12, 2002. The Board of Review reached the same reasoned conclusions in its decision of April 2, 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: December 17, 2013**

**CONCURRED IN BY:**

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Allen H. Loughry II

**DISSENTING:**

Justice Margaret L. Workman

Justice Menis E. Ketchum