

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

CONNIE J. PRUITT,
Claimant Below, Petitioner

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

vs.) **No. 12-1144** (BOR Appeal No. 2046933)
(Claim No. 2009090827)

MCDOWELL COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Connie J. Pruitt, by Gregory S. Prudich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. McDowell County Board of Education, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 28, 2012, in which the Board affirmed a February 16, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 29, 2010, decision denying the request to add displacement of lumbar intervertebral disc without myelopathy as a compensable condition. The Office of Judges also affirmed the claims administrator's August 5, 2010, decision denying authorization for a lumbar laminectomy at L4-5. 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. Pruitt worked as a cook for the McDowell County Board of Education. On March 16, 2009, Ms. Pruitt injured her lower back while lifting boxes of food. An initial MRI following the injury revealed a broad based bulge at L4-5 and degenerative changes at L4-5. Her claim was held compensable for a lumbar strain. Following initial treatment, Dr. Nadar evaluated Ms. Pruitt. Dr. Nadar found that Ms. Pruitt had reached the maximum degree of medical

improvement. Ms. Pruitt, however, continued to experience pain in her lower back. Ms. Pruitt then underwent a CT myelogram of her lumbar spine which revealed a herniated disc at L4 on the left. Based on this report, Dr. Koja requested authorization for a lumbar laminectomy at L4-5. Ms. Pruitt's claim was submitted to Dr. Thaxton, who reviewed the records in the case and recommended against authorizing the procedure. On August 5, 2010, the claims administrator denied authorization for a lumbar laminectomy. Dr. Guberman then evaluated Ms. Pruitt and found that the surgery was medically necessary and appropriate to treat Ms. Pruitt's herniated disc. He also stated that the herniated disc was causally related to Ms. Pruitt's compensable injury. Dr. Bailey then examined Ms. Pruitt and found that her ongoing lumbar complaints were due to a degenerative spinal condition. On December 29, 2010, the claims administrator rejected a request to add displacement of lumbar intervertebral disc without myelopathy as a compensable condition of the claim. Dr. Bachwitt then conducted an independent medical evaluation of Ms. Pruitt and determined that Ms. Pruitt did not require any additional testing or treatment in relation to this claim. Dr. Bachwitt found that Ms. Pruitt's need for a lumbar laminectomy was related to degenerative changes and not to her compensable injury. On February 16, 2012, the Office of Judges affirmed the August 5, 2010, and December 29, 2010, claims administrator decisions. The Board of Review then affirmed the Order of the Office of Judges on August 28, 2012, leading Ms. Pruitt to appeal.

The Office of Judges concluded that Ms. Pruitt did not develop a displaced intervertebral disc at L4-5 in the course of and resulting from her employment. The Office of Judges found that the imaging studies taken soon after the injury showed degenerative changes and a broad-based bulging at L4-5 and L5-S1. The Office of Judges found that there was no evidence of a herniated disc until a CT myelogram was taken in May of 2010. The Office of Judges found that Dr. Thaxton, Dr. Bailey, and Dr. Bachwitt all concluded that Ms. Pruitt's herniation was the result of degenerative disc disease. The Office of Judges found that the request of Dr. Koja was not persuasive because he did not detail how the herniation occurred. The Office of Judges also concluded that a lumbar laminectomy at L4-5, on the left side, was not medically related or reasonably required for treatment of Ms. Pruitt's compensable injury. The Office of Judges found that Dr. Guberman's recommendation in favor of authorizing the procedure was not persuasive because there was no radiographic evidence of the herniated disc immediately following the injury. 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 and the findings of the Office of Judges. Ms. Pruitt has not demonstrated that displacement of intervertebral disc is causally related to her compensable lumbar sprain. Ms. Pruitt has not shown that she developed the herniation at L4-5 in the course of and resulting from her employment. The herniated disc was not present in the MRI taken immediately following her lumbar sprain and was not evident until the CT myelogram taken in May of 2010. Dr. Thaxton, Dr. Bailey, and Dr. Bachwitt all found that this condition was not caused by her compensable injury but instead related it to her degenerative disc disease. Their opinions are supported by the record taken as a whole. Ms. Pruitt has also not shown that the requested L4-5 lumbar laminectomy is medically related and reasonably required to treat her compensable condition. The procedure related to Ms. Pruitt's herniated L4-5 disc, which is not a compensable condition 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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating