

**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 BRAGG,**  
**Claimant Below, Petitioner**

vs.) **No. 14-1278** (BOR Appeal No. 2049531)  
(Claim No. 2013018538)

**HUNTINGTON ALLOYS CORPORATION,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Michael Bragg, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. 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 November 25, 2014, in which the Board affirmed a May 23, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 28, 2013, decision rejecting the claim. 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. Bragg, a steelworker, alleges that he injured his lower back in the course of his employment on January 13, 2013, when he bent over to unlock his bike. An employee's and physician's report of injury stated that he suffered a lumbar sprain/strain, sciatica, and displacement of lumbar intervertebral disc. Mr. Bragg was treated by Shawn Cottrell, D.C., for the back pain and was diagnosed with a new condition in his thoracic and lumbar spine. Dr. Cottrell noted that Mr. Bragg had prior back pain in the L5-S1 disc; however, the new symptoms were at the L2-3 and L3-4 discs, which were never treated before. He took him off of work for two weeks and released him to return to modified duty on January 24, 2013.

Mr. Bragg injured his lumbar spine on March 17, 2006. A March 31, 2006, MRI showed disc desiccation with disc bulge and central canal stenosis at L3-4 and disc desiccation with left paracentral herniated disc resulting in left sided foraminal stenosis at L5-S1. Michael Condaras, D.C., performed an independent medical evaluation for the injury on November 21, 2006. He diagnosed lumbosacral sprain/strain secondary to disc bulge at L3-4 with mild central canal stenosis as well as left paracentral herniated L5-S1 disc causing foraminal stenosis. He assessed 5% whole person impairment.

Mr. Bragg testified in a deposition that he bent over to unlock his bike at work and felt a squirting sensation in his lower back followed by pain in the middle of his lower back that radiated into both legs as well as weakness in his legs. He stated that he informed his supervisor shortly after that he was injured and was referred to the emergency medical technician on duty who recommended Mr. Bragg visit the emergency room. He admitted to having a prior work-related lower back injury in 2006. He asserted however that the pain from that injury was different from his 2013 injury and it was in a different location. He testified that he did not work the day before the alleged January 13, 2013, injury and did not injure his back at home.

Marsha Bailey, M.D., performed an independent medical evaluation on February 20, 2014, in which she diagnosed chronic lower back pain without radiculopathy present since at least 2006. She opined that Mr. Bragg's lower back pain flair-up was not related to an occupational injury sustained on January 13, 2013. She found that Dr. Cottrell's treatment records clearly document prior treatment to the same region of his lumbar spine that Mr. Bragg alleges he injured. She noted that Mr. Bragg spent the weekend prior to the compensable injury sitting and watching his daughter play basketball. She opined that the human spine is maximally loaded in the seated position and that it is a well-recognized risk factor for worsening back pain. She concluded that his prolonged sitting likely precipitated a flair-up of his lower back pain the very next morning.

The claims administrator rejected the claim on January 28, 2013. The Office of Judges affirmed the decision in its May 23, 2014, Order. It determined that Mr. Bragg has a long and extensive history of lumbar back pain and treatment. Though this does not exclude him from sustaining a work-related lumbar spine injury, the Office of Judges concluded that his description of the injury does not comport with the requirements set forth in West Virginia Code of State Rules § 23-4-1 (2008). Specifically, the Office of Judges held that while his back pain occurred in the course of his employment, it did not occur as a result of his employment. The Office of Judges noted that he testified he did nothing strenuous the day prior to his alleged work-related injury. He stated that he spent the entirety of the prior day sitting in a gym watching his daughter play basketball. Dr. Bailey stated in her independent medical evaluation that the adult spine is maximally loaded in the seated position. She opined that prolonged sitting is a well-recognized risk factor for worsening of back pain in individuals with chronic lower back problems, such as Mr. Bragg. She concluded that it was the most likely cause of his flair-up of lower back pain the following morning. The Office of Judges held that Mr. Bragg's injury did not occur as a result of his employment. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on November 25, 2014.

On appeal, Mr. Bragg argues that his injury was clearly in the course of and resulting from his employment. He asserts that he had a prior back injury; however, that injury was also work-related and if the current issue is a flair-up, it should still be compensable. Huntington Alloys Corporation argues that Mr. Bragg's act of simply bending over does not place his injury in the course of and resulting from his employment. It asserts that his employment must cause the injury and simply being injured while at work is not enough. It further asserts that the injury was likely caused by his pre-existing back problems.

After review, we agree with the reasoning of the Office of Judges and the conclusions of the Board of Review. Mr. Bragg has a long history of lower back pain. The activity he was engaged in at work, bending over to unlock a bike, occurred in the course of his employment. However, his exacerbation of his prior low back pain did not occur as a result of his employment. Dr. Bailey persuasively opined that his flair-up was likely caused by prolonged sitting the prior day.

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