

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 23, 2016

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

GREGORY MOORE,
Claimant Below, Petitioner

vs.) **No. 14-1178** (BOR Appeal No. 2049492)
(Claim No. 2013014811)

APPALACHIAN STONE, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Gregory Moore, by Anne Wandling, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.¹ Appalachian Stone, LLC, by Daniel Murdock, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated October 29, 2014, in which the Board affirmed a May 12, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed three separate claims administrator's decisions dated December 19, 2012, in which the claims administrator denied Mr. Moore's request for authorization of a pain management referral; denied authorization of Mr. Moore's request for an evaluation by a neurosurgeon; and held the claim compensable for lumbago but denied the compensability of multilevel degenerative changes at L3-4.² Additionally, the Office of Judges affirmed the claims administrator's decision dated January 7, 2013, denying Mr. Moore's request for authorization of a left hip MRI. Finally, the Office of Judges affirmed the

¹ Mr. Moore appealed the decision of the Board of Review and this Court, by memorandum decision affirmed in part, reversed in part, and remanded, finding that the Board of Review erred in failing to add the diagnosis of avascular necrosis of the left hip as a compensable component of the claim, failing to grant authorization of the requested left hip MRI, and instructed that avascular necrosis of the left hip be added as a compensable component of the claim, and therefore authorized the requested left hip MRI. The remainder of the Board of Review's Order was affirmed. See *Gregory Moore v. Appalachian Stone, LLC*, No. 14-1178 (W.Va. Supreme Court, January 7, 2016)(memorandum decision). Appalachian Stone, LLC, subsequently filed a petition for rehearing which this Court granted on April 8, 2016.

² Mr. Moore has not appealed the denial of his request to add multilevel degenerative changes at L3-4 as a compensable component of the claim to this Court.

claims administrator's decision dated February 14, 2013, denying Mr. Moore's request to add avascular necrosis of the left hip as a compensable component of 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. Moore was injured on October 20, 2012, while replacing a mining belt on a piece of heavy machinery. On October 24, 2012, he sought treatment in Williamson Memorial Hospital's emergency department and reported that he was experiencing back pain that radiated into his left leg following an injury sustained in the course of his employment. Radiographs of the lumbar spine were obtained and revealed mild degenerative changes, and Mr. Moore was diagnosed with lumbago and sciatica. Mr. Moore continued his follow-up care with his primary care provider, Ahsen Ali, M.D., who diagnosed him with lumbago and aseptic arthrosis of the left hip.

On January 17, 2013, an MRI of the left hip was performed and an indeterminate diagnosis of either avascular necrosis or inflammation was made. Following the left hip MRI, Mr. Moore sought treatment with Vivek Neginhal, M.D., who noted that Mr. Moore reported experiencing left hip pain and discomfort following a work-related injury to his lower back and left hip. Dr. Neginhal diagnosed Mr. Moore with osteoarthritis and aseptic necrosis of the femoral head. He subsequently performed a left total hip replacement during which the diagnoses of avascular necrosis and osteoarthritis were confirmed.

On June 10, 2013, Bruce Guberman, M.D., performed a records review. He opined that the avascular necrosis of the left femoral head was directly and solely related to the October 20, 2012, injury. He noted that Mr. Moore reported that he was in an awkward position at the time of the injury, and that Mr. Moore further reported a rapid onset of pain in his back, hip, leg, and groin. Dr. Guberman further opined that the pain reported by Mr. Moore represented a left hip injury. Finally, Dr. Guberman opined that enough time had elapsed between the date of injury and the date on which the left hip MRI was performed to conclude that the avascular necrosis revealed via MRI is causally related to the October 20, 2012, injury.

On September 23, 2013, ChuanFang Jin, M.D., performed an independent medical evaluation. She opined that the avascular necrosis present in the left hip is not causally related to Mr. Moore's employment. Dr. Jin noted that there is no medical literature suggesting that avascular necrosis has ever been caused by a lifting or twisting injury, and further opined that avascular necrosis is a chronic disease which does not develop within only a few months.

In five separate decisions, the claims administrator denied Mr. Moore's request for authorization of a referral for pain management; denied Mr. Moore's request for an evaluation by

a neurosurgeon; held the claim compensable for lumbago but denied the compensability of multilevel degenerative changes at L3-4; denied Mr. Moore's request for authorization of a left hip MRI based upon a finding that the left hip is not a compensable body part; and denied Mr. Moore's request to add avascular necrosis as a compensable component of the instant claim. The Office of Judges affirmed all five claims administrator's decisions in a decision dated May 12, 2014. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its Order dated October 29, 2014. On appeal, Mr. Moore asserts that the evidence of record clearly demonstrates that he developed avascular necrosis of the left hip as a result of the October 20, 2012, injury, and further asserts that the diagnosis of avascular necrosis should be added as a compensable component of the claim and all necessary treatment relating to the diagnosis of avascular necrosis should be authorized.

Regarding the denial of authorization for a referral for pain management and the denial of the request for an evaluation by a neurosurgeon, the Office of Judges determined that Mr. Moore failed to introduce any evidence relating to those issues and therefore concluded that the claims administrator's decisions regarding those issues should be affirmed. Regarding Mr. Moore's request to add avascular necrosis as a compensable component of the claim, the Office of Judges found that Dr. Guberman's conclusion that the avascular necrosis of the left hip arises from the work-related injury amounts to speculation. Additionally, in arriving at its conclusion, the Office of Judges looked to the conclusions expressed by Dr. Jin. Further, the Office of Judges found that because the injury was initially reported as a sudden back sprain, there is no reliable evidence that Mr. Moore ever sustained a left hip injury. Additionally, the Office of Judges concluded that the claims administrator properly denied Mr. Moore's request for authorization of an MRI of the left hip.

We agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Mr. Moore has failed to introduce any evidence demonstrating that the requests for authorization of a pain management referral and an evaluation by a neurosurgeon are reasonably required and medically necessary for the treatment of the compensable injury. Additionally, the evidence of record fails to establish that Mr. Moore developed avascular necrosis of the left hip as a result of his employment. Once again, we note that Dr. Jin opined that avascular necrosis is a chronic condition which does not develop over the course of a few months.³ Finally, because the left hip is not a compensable body part, the denial of Mr. Moore's request for authorization of an MRI of the left hip was proper.

³ We note that the interval between the compensable injury and the initial diagnosis of avascular necrosis of the left hip is approximately three months.

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: May 23, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin
Justice Allen H. Loughry II

DISSENTING:

Justice Robin J. Davis
Justice Margaret L. Workman