

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

CHARLES R. ADKINS,
Claimant Below, Petitioner

vs.) **No. 15-0560** (BOR Appeal No. 2049952)
(Claim No. 2013022455)

WEST VIRGINIA DIVISION OF NATURAL RESOURCES,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Charles R. Adkins, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Division of Natural Resources, by Lisa Warner Hunter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 12, 2015, in which the Board affirmed an October 14, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 26, 2013, decision denying a request for authorization of a right shoulder arthroscopy with a capsular release/manipulation under anesthesia and biceps tenolysis with post-operative physical therapy. 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. Adkins was injured on February 20, 2013, while he was operating a piece of equipment that malfunctioned. Mr. Adkins's claim for workers' compensation benefits was held compensable for a right shoulder sprain, a cervical sprain, a thoracic sprain, and a lumbar sprain. Following the compensable injury, Mr. Adkins began treating with Allen Young, M.D., who noted that Mr. Adkins has a significant history of prior right shoulder injuries. Dr. Young noted that Mr. Adkins's range of motion in the right shoulder decreased following the February 20,

2013, injury. Additionally, Dr. Young opined that the results of a post-injury MRI, which revealed tendinopathy of the supraspinatus tendon with mild subacromial/subdeltoid bursitis, warranted a referral for an orthopedic consultation. Pursuant to Dr. Young's recommendation, Mr. Adkins was referred to orthopedic surgeon George Bal, M.D., who recommended and later performed the surgical procedure at issue in the instant appeal.

On June 20, 2013, Prasadarao Mukkamala, M.D., performed an independent medical evaluation. Dr. Mukkamala also took note of Mr. Adkins's history of significant prior injuries to the right shoulder. Specifically, he noted that Mr. Adkins had already undergone four right shoulder surgeries prior to the February 20, 2013, injury. Dr. Mukkamala opined that the only injuries arising from the February 20, 2013, incident were bilateral shoulder sprains, a cervical sprain, a thoracic sprain, and a lumbar sprain. He also opined that Mr. Adkins has reached maximum medical improvement and requires no further treatment in relation to the February 20, 2013, injury. Following the issuance of his independent medical evaluation report, Dr. Mukkamala submitted three supplemental reports in which he disagreed with Dr. Bal's surgical recommendation and opined that the contracture of the posterior capsule of the right shoulder, which the recommended surgical procedure was aimed at treating, pre-existed the February 20, 2013, injury and was in no way related to it.

Ronald Fadel, M.D., reviewed Mr. Adkins's medical record and opined that the documents he received establish that Mr. Adkins has a longstanding history of pain and dysfunction in the right shoulder of a nature very similar to the symptoms he reported following the February 20, 2013, injury. Dr. Fadel further opined that because Mr. Adkins sustained no more than sprains as a result of the February 20, 2013, injury, he is unable to concur with Dr. Bal's recommendation to perform a right shoulder arthroscopy for the treatment of adhesive capsulitis.

On December 26, 2013, the claims administrator denied Mr. Adkins's request for a right shoulder arthroscopy with a capsular release/manipulation and biceps tenolysis with post-operative physical therapy. Following the claims administrator's decision, David Soulsby, M.D., performed a records review. Dr. Soulsby also opined that Mr. Adkins sustained nothing more than sprains as a result of the February 20, 2013, injury. Further, he indicated that the tendonitis and subacromial bursitis revealed via MRI was present as early as 1995. Dr. Soulsby noted that Mr. Adkins's medical record also reveals abundant evidence of a recurrent problem with the glenoid labrum initiated by a right shoulder labral tear in 1995. He further opined that Mr. Adkins has experienced persistent range of motion problems with the right shoulder and has suffered permanent and irreversible range of motion loss in the right shoulder that began in 1995. Finally, Dr. Soulsby opined that Mr. Adkins's medical record does not contain any objective evidence demonstrating that the need for the requested surgery arises from the February 20, 2013, injury.

In its Order affirming the December 26, 2013, claims administrator's decision, the Office of Judges held that Mr. Adkins has failed to demonstrate that the need for the requested surgical procedure at issue in the instant appeal arises from injuries he sustained on February 20, 2013. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its

decision dated May 12, 2015. On appeal, Mr. Adkins asserts that the evidence of record clearly demonstrates that the surgical procedure at issue is necessary for the treatment of injuries he sustained on February 20, 2013.

In its Order, the Office of Judges noted that Mr. Adkins sustained several serious prior right shoulder injuries for which he had already undergone four separate surgical procedures prior to the February 20, 2013, injury. The Office of Judges then found that the opinions of Dr. Mukkamala, Dr. Fadel, and Dr. Soulsby are persuasive and concluded that the evidence of record demonstrates that the need for the surgical procedure at issue arises from Mr. Adkins's numerous pre-existing right shoulder conditions rather than the compensable right shoulder sprain. We agree with the reasoning and conclusions of the Office of Judges, as affirmed by 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: April 12, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Allen H. Loughry II