

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

**ALCO FENCE COMPANY
OF CENTRAL WEST VIRGINIA, INC.,
Employer Below, Petitioner**

vs.) **No. 15-0611** (BOR Appeal No. 2050145)
(Claim No. 2014029455)

**RICHARD WILSON,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner Alco Fence Company of Central West Virginia, Inc., by Alyssa Sloan, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated May 22, 2015, in which the Board affirmed a January 9, 2015, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's April 21, 2014, decision rejecting Mr. Wilson's application for workers' compensation benefits. The Office of Judges held Mr. Wilson's claim compensable for an L1 burst fracture. 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. Wilson alleges that he injured his lower back on March 20, 2014, while lifting a large metal gate. He continued to perform his regular employment duties for the remainder of the work day on March 20, 2014, and for the entire work day on March 21, 2014. On March 22, 2014, Mr. Wilson was transported via ambulance to Camden Clark Memorial Hospital's emergency department. A CT scan was performed and revealed an acute compression fracture at L1. Treatment records from the emergency department also indicate that Mr. Wilson may have

suffered a seizure. Houman Khosrovi, M.D., surgically repaired a burst fracture at L1 on April 5, 2014. On April 21, 2014, the claims administrator rejected Mr. Wilson's application for workers' compensation benefits.

In an undated letter, Dr. Khosravi's physician's assistant, Brian Showalter, PA-C, indicated that Mr. Wilson reported that his pain level continued to increase in the two days following the alleged injury until his pain level became intolerable and he was transported to Camden Clark Memorial Hospital. Mr. Showalter opined that it is possible that Mr. Wilson sustained an L1 burst fracture while lifting a large metal gate. Mr. Showalter further opined that it is common to experience a delayed onset of pain with injuries of this nature, with it also being possible that Mr. Wilson would have been able to continue performing his normal employment duties for a period of time given the specific nature of the vertebral fracture.

The Office of Judges reversed the April 21, 2014, claims administrator's decision and held the claim compensable for an L1 burst fracture. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated May 22, 2015. On appeal, Alco Fence Company asserts that the evidence of record fails to demonstrate that Mr. Wilson sustained an L1 burst fracture in the course of and resulting from his employment.

In reversing the claims administrator's decision, the Office of Judges relied on the opinion of Mr. Showalter. The Office of Judges then found that Alco Fence Company has not offered any evidence rebutting the professional opinion of Mr. Showalter. After reviewing the evidentiary record, the Office of Judges concluded that Mr. Wilson sustained an L1 burst fracture in the course of and resulting from his employment on March 20, 2014. 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