

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

March 22, 2016

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

**MARTHA D. NEELY,**  
**Claimant Below, Petitioner**

vs.) **No. 15-0761** (BOR Appeal No. 2050073)  
(Claim No. 2013022944)

**WEST VIRGINIA UNITED HEALTH SYSTEM,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Martha D. Neely, by M. Jane Glauser, her 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 July 10, 2015, in which the Board affirmed a November 21, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 4, 2014, decision denying payment for services rendered by David Lynch, M.D., on four separate occasions. 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. Neely was injured on February 25, 2013, while transporting a very large patient. On March 7, 2013, her claim for workers' compensation benefits was held compensable for cervical, thoracic, and lumbar sprains. A cervical disc protrusion/herniation was later added as a compensable component of the claim. On September 12, 2013, Bill Hennessey, M.D., evaluated Ms. Neely and opined that she needed no further treatment in relation to the February 25, 2013, injury. On December 5, 2013, Bruce Guberman, M.D., performed an independent medical evaluation and opined that Ms. Neely had reached maximum medical improvement regarding the

February 25, 2013, injury and required no further treatment or diagnostic testing, aside from the continued use of medications and follow-up visits with her physician.

On June 4, 2014, the claims administrator denied Ms. Neely's request for payment of services rendered by Dr. Lynch on December 17, 2013; January 14, 2014; February 11, 2014; and April 15, 2014, pursuant to the conclusions expressed by Dr. Hennessey on September 12, 2013. In its Order affirming the June 4, 2014, claims administrator's decision, the Office of Judges held that the evidence of record fails to establish that the services at issue rendered by Dr. Lynch are related to the compensable injury. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated July 10, 2015.

In reaching its decision, the Office of Judges relied on Dr. Guberman's finding that Ms. Neely has reached maximum medical improvement and is in no further need of treatment. Although the June 4, 2014, claims administrator's decision indicated that Dr. Lynch was providing treatment for a cervical sprain/strain, on appeal Ms. Neely asserts that she was actually receiving treatment for a herniated nucleus pulposus at C5-6, which was previously added as a compensable component of the claim. As was noted by the Office of Judges, Ms. Neely has not introduced any evidence indicating that Dr. Lynch was rendering treatment on the dates at issue for anything other than a cervical sprain which, according to the medical evidence of record, resolved long ago.

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: March 22, 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