

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

CATHERINE E. SPRINKLE,
Claimant Below, Petitioner

FILED

November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 17-0217** (BOR Appeal No. 2051464)
(Claim No. 2015025246)

QUAD/GRAPHICS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Catherine E. Sprinkle, by Christopher J. Wallace, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Quad/Graphics, Inc., by Jeffrey Carder and Jeffrey B. Brannon, its attorneys, filed a timely response.

The issue on appeal is whether cervical radiculopathy should be added as a compensable component of the claim. This appeal originated from the June 11, 2015, claims administrator's decision denying the request to add cervical strain and cervical radiculopathy as compensable conditions in the claim and from the July 10, 2015, claims administrator's decision denying the request for a cervical MRI¹. In its June 30, 2016, Order, the Workers' Compensation Office of Judges reversed the claims administrator's June 11, 2015, decision and added cervical sprain/strain as a compensable condition but held that cervical radiculopathy remains a non-compensable condition. The Office of Judges also reversed the July 10, 2015, claims administrator's decision and authorized a cervical MRI. The Board of Review's Final Order dated February 17, 2017, affirmed the Order of the Office of Judges. 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.

¹ The July 10, 2015, claims administrator's Order is not on appeal.

Catherine E. Sprinkle, a finish technician, was injured in the course of her employment on March 19, 2015, when she lifted books over her head and suffered sudden onset pain in her shoulder and back. Ms. Sprinkle was treated by Heather Saville, PA, at Quad/Med and diagnosed with left shoulder pain. Ms. Sprinkle did not report neck pain at that time. Ms. Sprinkle's shoulder pain continued and on March 31, 2015, she underwent an MRI which revealed a small amount of fluid and edema in the sub-acromial sub-deltoid bursa. The underlying rotator cuff was intact and there were no labral tears or joint effusion. The biceps and bicipital labral junction were within normal limits. On March 31, 2015, the claims administrator held the claim compensable for a left shoulder sprain on a no lost time basis.

In April of 2015, Ms. Sprinkle began seeking treatment at the Center for Orthopedic Excellence. She was examined by Kenneth Guida, PA-C, on April 9, 2015. Mr. Guida noted a positive Spurlings Maneuver to the left and cramping when Ms. Sprinkle turned her head to the right. Ms. Sprinkle was given a cortisone shot, placed on light duty at work, and referred for physical therapy. Mr. Guida opined that all of Ms. Sprinkle's symptoms were related to her compensable injury. He also noted that Ms. Sprinkle was suffering from left upper extremity radiculopathy. On April 15, 2015, Mr. Guida diagnosed Ms. Sprinkle with left shoulder pain and a cervical strain. A few weeks later on April 30, 2015, Ms. Sprinkle returned to Mr. Guida, who noted that she was experiencing spasms in her cervical region and numbness in the left hand. Mr. Guida diagnosed shoulder pain, cervical strain, and left upper extremity radiculopathy with cervical spasms, all of which were attributed to her compensable injury. Mr. Guida ordered a cervical MRI. Ms. Sprinkle subsequently sought to have the conditions of cervical sprain and cervical radiculopathy added as compensable conditions of the claim and requested authorization for a cervical MRI.

On June 11, 2015, the claims administrator denied the request to add cervical strain and cervical radiculopathy as secondary conditions in the claim. Shortly thereafter, the claims administrator denied the request for a cervical MRI on July 10, 2015. Ms. Sprinkle was evaluated by Karoly Varga, M.D., a neurologist, on July 30, 2015. Dr. Varga diagnosed Ms. Sprinkle with cervical radiculopathy, left brachial plexopathy, and left thoracic outlet syndrome. Dr. Varga opined that a cervical MRI and an upper extremity EMG/nerve conduction study were needed. He recommended that Ms. Sprinkle continue with physical therapy and remain on light duty work. Per Dr. Varga's request, Ms. Sprinkle underwent an EMG and nerve conduction study on November 17, 2015. The study showed chronic left multilevel cervical radiculopathies versus left brachial plexopathy and bilateral mild median neuropathies at the wrists. On December 3, 2015, Ms. Sprinkle underwent a cervical MRI outside of the claim.

Ms. Saville testified in a deposition before the Office of Judges on December 15, 2015. Ms. Saville testified that she worked at Quad/Med and had treated Ms. Sprinkle regarding her compensable injury. Ms. Saville noted that at the time of injury, Ms. Sprinkle reported complaints of left shoulder pain, upper arm pain, numbness, and pain down the left arm. Ms. Sprinkle did not mention neck pain. Ms. Saville testified that she examined Ms. Sprinkle's cervical and thoracic spine and found them to be normal. She did detect decreased range of motion in the shoulder. After the accident, Ms. Saville next treated Ms. Sprinkle on March 24,

2015, and noted that there was no neck pain. Ms. Saville treated Ms. Sprinkle for the last time on April 7, 2015, and again stated that there was no neck pain reported.

Ms. Sprinkle also testified in a deposition on December 15, 2015. She stated that on the date of injury she had pain in her neck, shoulder, and arm. Everything went numb from her shoulder to her elbow and hand. Ms. Sprinkle noted that she experienced muscle spasms in her neck and back on the day of the injury and could not lift her arm above her neck or head. She reported that she was eventually able to lift her arm above her shoulder after receiving steroid injection treatments and a cortisone shot. Ms. Sprinkle testified that she did not recall having any neck injuries or pain prior to the compensable injury. Ms. Sprinkle stated she still has numbness and tingling in her left pinky finger, ring finger, and palm that was not present prior to the injury.

On January 28, 2016, Jonathan Luchs, M.D., from Diagnostic Dating Specialists, LLC, reviewed Ms. Sprinkles's medical records and authored a report concluding that the cervical MRI performed on December 3, 2015, demonstrated multilevel degenerative disc disease with desiccation, disc bulges, endplate osteophytes, and arthropathy, all of which were chronic degenerative findings. There was protruding disc material at C5-6 with no associated high signal around it to suggest an acute herniation and lateral recess narrowing which was secondary to degenerative disc disease and arthropathy.

By decision dated June 30, 2016, the Office of Judges reversed the claims administrator's decision and added cervical sprain/strain to the claim. The Office of Judges found that while Ms. Sprinkle did not initially report neck pain, she did start experiencing symptoms and reported neck pain to Mr. Guida on April 9, 2015. Mr. Guida diagnosed a cervical strain and upper extremity diagnoses. He noted that Ms. Sprinkle was having cervical spasms and opined that all of her symptoms were related to the compensable injury. The Office of Judges noted that Ms. Sprinkle's neck symptoms were documented as early as the beginning of April of 2015, a mere few weeks after her compensable injury. The Office of Judges noted that the EMG/nerve conduction study revealed degenerative conditions, demonstrating that Ms. Sprinkle had pre-existing problems not likely stemming from the recent injury. The cervical MRI also revealed degenerative conditions that were not related to the compensable injury. However, Ms. Sprinkle was not attempting to have these degenerative conditions added to the claim. Rather, the Office of Judges noted that she was only seeking to have cervical sprain and cervical radiculopathy added to the claim. The Office of Judges concluded that the evidence supported finding that a cervical injury occurred on March 19, 2015, as it was only a few weeks later that Ms. Sprinkle began reporting symptoms. While Ms. Sprinkle had some pre-existing degenerative conditions in her neck, it did not preclude finding that she suffered a cervical sprain in the course of and as a result of her employment.

The Office of Judges determined that the diagnosis of cervical radiculopathy was more likely related to Ms. Sprinkle's pre-existing conditions rather than the compensable injury. The Office of Judges relied on the EMG and nerve conduction study, which showed chronic left multilevel cervical radiculopathies versus left brachial plexopathy and bilateral mild median neuropathies at the wrists and found that cervical radiculopathy pre-existed the compensable injury. Additionally, the Office of Judges noted that the cervical MRI also revealed degenerative

disc disease, arthropathy, disc bulges, and other degenerative conditions that would be more likely to have caused Ms. Sprinkle's radiculopathy than a simple cervical sprain. Thus, the Office of Judges concluded that while Ms. Sprinkle does suffer from cervical radiculopathy, it is not compensable because it was not received in the course of and as a result of her employment.

Finally, the Office of Judges reversed the claims administrator's decision denying a cervical MRI and authorized the request. The Office of Judges noted that although Ms. Sprinkle had undergone a cervical MRI outside of the claim, it did not bar her from requesting that the treatment be covered under the claim. The Office of Judges reviewed the medical reports of Dr. Varga and Mr. Guida and based upon their opinions, determined that further investigation of the cervical symptoms was warranted. As the cervical MRI was reasonable and necessary medical treatment in the claim at the time it was requested, the Office of Judges found that it should have been authorized. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on February 17, 2017.

On appeal, Ms. Sprinkle requests that the condition of cervical radiculopathy be added as a compensable condition in this claim. After review, we agree with findings of fact and conclusions of law of the Office of Judges as affirmed by the Board of Review. The medical evidence of record indicates that Ms. Sprinkle did sustain a cervical sprain/strain in the course of and as a result of her employment. However, extensive testing has revealed that Ms. Sprinkle suffers from a variety of degenerative conditions that are much more likely the source of her cervical radiculopathy than a simple sprain injury. Thus, denial of the condition was not in error.

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: November 22, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Elizabeth D. Walker

DISSENTING:

Justice Menis E. Ketchum