

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JIMMY WILLIAMS,
Claimant Below, Petitioner

vs.) **No. 17-0244** (BOR Appeal No. 2051604)
(Claim No. 2015031660)

XMV, INC.,
Employer Below, Respondent

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

MEMORANDUM DECISION

Mr. Williams seeks to have his workers' compensation claim held compensable, and seeks reasonable medical treatment for his injuries allegedly sustained on March 11, 2015, but not reported until April 15, 2015, after he had been disciplined for tardiness. The claims administrator denied the the claim on May 26, 2015. The claims administrator also issued two additional Orders, denying requests for physical therapy and a lumbar MRI.

On October 5, 2016, the Worker's Compensation Office of Judges affirmed all three of the claims administrator's Orders. This appeal arises from the Board of Review's Final Order dated February 17, 2017, which affirmed the Office of Judges Orders denying the claim and denying treatment. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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, we affirm the decision of the Board of Review.

Mr. Williams, a roof bolter, filed a Report of Injury stating that he sustained an injury on March 11, 2015, when he slipped and fell at work. Although Mr. Williams alleged his injury occurred on March 11, 2015, he did not report the incident until April 15, 2015, the day he sought treatment at Bradshaw Medical Clinic with Cherie Vance, FNP-BC. During physical examination, he reported that his back pain developed acutely and had been present for one month. His physical examination showed no swelling, redness, or palpitation. The assessment for the alleged injury was acute low back pain and lumbago. Mr. Williams was prescribed pain medication, and he was referred to an orthopedic surgeon for a consultation. A work excuse note was provided to him for work from April 15, 2015, through April 21, 2015.

A treatment note establishes that Mr. Williams was seen for care at the Bradshaw Medical Clinic on April 9, 2015, six days before he first reported his alleged injury on April 15, 2015. He sought treatment for complaints of cough and sinus pain. The office note makes no mention of any complaints of back pain or the possibility of a work-related injury. Mr. Williams was diagnosed with acute sinusitis, unspecified and unspecified infective otitis externa. He was treated with Q-Tussin for cough.

On May 11, 2015, Mr. Williams was evaluated by Robert Kropac, M.D., for an orthopedic consultation. Mr. Williams reported an increased amount of low back pain, with right lower extremity radiating pain and numbness. Dr. Kropac opined that Mr. Williams presented with subjective complaints, and clinical findings on physical examination were consistent with a diagnosis of lumbosacral musculoligamentous strain, and lumbar disc herniation with right lower extremity radiculopathy secondary to the injury on March 11, 2015. Dr. Kropac recommended physical therapy, and requested an MRI of the lumbosacral spine for diagnostic purposes. A prescription was provided for physical therapy three times a week for four weeks. A work excuse was provided stating Mr. Williams could not return to work until June 9, 2015.

On June 8, 2015, Mr. Williams returned to Dr. Kropac for an orthopedic re-examination. He reported that he was not able to participate in physical therapy. He also reported that he was unable to have an MRI. After re-evaluation, the diagnoses remained to be lumbosacral musculoligamentous strain, and lumbar disc herniation with right lower extremity radiculopathy secondary to the compensable injury. Dr. Kropac also provided work excuses that kept Mr. Williams off work through, at least, July 23, 2015.

On May 26, 2015, the claims administrator issued an Order denying the application for benefits. The application was denied because the claims administrator did not believe the evidence provided showed that Mr. Williams sustained an injury in the course of and resulting from his employment. The claims administrator further stated that the decision was also based upon the Report of Injury form that was completed two months after the date of injury, and it was not completed by the original treating physician. Following the Order rejecting the claim, the claims administrator issued two additional Orders on May 26, 2015. The claims administrator issued an Order denying the request from Dr. Kropac for a lumbar spine MRI. The claims administrator also issued an Order denying Dr. Kropac's request for physical therapy three times a week for four weeks. Both additional Orders were denied because the claim was rejected. Mr. Williams protested all three Orders.

Mr. Williams finally underwent a lumbar MRI on July 9, 2015. Dilip B. Patel, M.D., reviewed the findings and concluded that Mr. Williams had a significant finding of a focally protruding disc centrally at L3-L4, as well as an extruding small disc herniation right posterior lateral inferiority at the L4-L5 level. Degenerative disc disease was found at L3-4, L4-5 and at the L5-S1 levels. The MRI did not show any evidence of an acute to subacute compression fracture, traumatic subluxation or bone contusion.

Mr. Williams testified by deposition on February 4, 2016. He testified that he was hauling a load of supplies on March 11, 2015. When the scoop started spinning, he got off to get

a bag of rock dust, and slipped and fell in the wet mud. Mr. Williams stated that he twisted his back, and he thought he might have pulled a muscle in his back. He stated that he finished his shift and mentioned the injury to several co-workers. Mr. Williams was able to return to work the next day. As he continued to work for a few days, he began experiencing pain and numbness in his legs and back. Mr. Williams continued to work until April 15, 2015, when he sought treatment at Bradshaw Medical Clinic. Mr. Williams testified that prior to March 11, 2015, he had never had any back problems, leg problems, or hip problems and that he had no pain going down his leg.

Mr. Williams was evaluated by Prasadarao Mukkamala, M.D., on May 5, 2016. Dr. Mukkamala did not believe there was objective, credible medical evidence that Mr. Williams sustained a compensable injury on March 11, 2015. Dr. Mukkamala made note of the fact that Mr. Williams did not seek medical attention for his alleged injury until five weeks after the incident on March 11, 2015. Because the x-rays did not reveal a fracture, Dr. Mukkamala was of the opinion that Mr. Williams most likely would have suffered a lumbar sprain. The lumbar sprain being a soft tissue injury, would hurt at whatever level it hurts at the time, but then in the subsequent couple of weeks, the pain would abate. Dr. Mukkamala stated that the report of injury is not supported by the natural history for an injury of this type. Dr. Mukkamala concluded that Mr. Williams did not suffer a compensable injury on March 11, 2015. Because Mr. Williams worked for more than three weeks following the alleged injury, Dr. Mukkamala opined that he was never temporarily and totally disabled, and was not in need of any additional medical treatment.

The Office of Judges found that the preponderance of the evidence fails to show that Mr. Williams sustained an injury in the course of and as a result of his employment on March 11, 2015. Although Mr. Williams contends that he reported the injury around the time of its occurrence, the Office of Judges found it unsubstantiated. Mr. Williams did not seek medical treatment until five weeks after the alleged incident on March 11, 2015. Mr. Williams testified at deposition that he informed several co-workers about his injury. He further testified that he returned to work the next day and reported the incident to his supervisor. Mr. Williams stated that nothing was done and that he continued to work, but he could hardly walk from the pain. The Office of Judges reasoned that his contention that he reported the injury to his employer would be more persuasive if one or more of those individuals had verified Mr. Williams's version of the incident. Immediately following the reporting of his alleged injury, he sought treatment at Bradshaw Medical Clinic where a physical examination showed no swelling or redness, and no localized tenderness on palpation. The Office of Judges deemed the opinion of Dr. Mukkamala to be the most persuasive medical statement of record. Based upon the preponderance of the evidence, the Office of Judges concluded that the claims administrator Orders denying compensability and treatment should be affirmed.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges, and affirmed the conclusions of the Office of Judges in a Final Order dated February 17, 2017. On appeal, Mr. Williams, by Gregory S. Prudich, his attorney, argues that he has met his burden of proof and that it is more likely than not that an injury occurred on March 11, 2015. T. Jonathan Cook, counsel for XMV, Inc., argues that the record does not document that Mr.

Williams had any back pain until he reported his symptoms on April 15, 2015, five weeks after his alleged date of injury. We agree with the Board's decision. Dr. Mukkamala advised that Mr. Williams would have had pain immediately following the incident and pain would not have developed five weeks after the incident. The evidence supports the Board of Review's decision.

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 Menis E. Ketchum

Justice Elizabeth D. Walker