

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

GARY M. CULLUM,
Claimant Below, Petitioner

FILED

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

vs.) **No. 17-0347** (BOR Appeal No. 2051590)
(Claim No. 2015014039)

HUNTINGTON ALLOYS CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Mr. Cullum requests authorization of a permanent spinal cord stimulator following a compensable lower back injury. The claims administrator denied the request for authorization of a permanent spinal cord stimulator on March 10, 2016. The Office of Judges affirmed the claims administrator's decision on September 23, 2016. This appeal arises from the Board of Review's Final Order dated March 15, 2017, in which the Board affirmed the Order of the Workers' Compensation 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. 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. Cullum injured his lower back on October 9, 2014, while changing a saw blade in the course of his employment with Huntington Alloys Corporation. Mr. Cullum's claim for workers' compensation benefits was held compensable for a "lifting injury, sprain/strain, back, lumbar" on October 28, 2014. On December 30, 2014, Prasadarao Mukkamala, M.D., performed an independent medical evaluation. Dr. Mukkamala opined that Mr. Cullum has reached maximum medical improvement with respect to the compensable injury and requires no further treatment. Specifically, he noted that Mr. Cullum sought a pain clinic referral and opined that any treatment provided by a pain clinic would address the non-compensable diagnosis of degenerative spondyloarthropathy, which has delayed Mr. Cullum's recovery.

On November 16, 2015, Mr. Cullum was examined by Tammy Dann, M.D., who noted that Mr. Cullum was experiencing lower back, bilateral hip, and bilateral leg pain. She diagnosed Mr. Cullum with lumbar disc degeneration and lumbar radiculopathy, and recommended that Mr. Cullum undergo a trial spinal cord stimulator implantation. On November 17, 2015, Marsha Lee

Bailey, M.D., performed an independent medical evaluation. She noted that a November 16, 2014, lumbar spine MRI revealed a disc bulge at L5-S1, a small central disc protrusion at L4-5, and degenerative disc disease at L3-S1. Additionally, she noted that a September 6, 2015, lumbar spine MRI revealed stable findings. Dr. Bailey opined that the normal age-related degenerative changes revealed via MRI have delayed Mr. Cullum's recovery. She further opined that Mr. Cullum has reached maximum medical improvement and requires no further treatment, including the permanent spinal cord stimulator presently at issue.

On January 22, 2016, Rudy Malayil, M.D., implanted a trial spinal cord stimulator.¹ On March 8, 2016, Dr. Dann requested authorization for a permanent spinal cord stimulator. The claims administrator denied Dr. Dann's request for authorization of a permanent spinal cord stimulator on March 10, 2016.

In its Order affirming the March 10, 2016, claims administrator's decision, the Office of Judges held that the requested permanent spinal cord stimulator is not medically necessary or reasonably required for the treatment of the October 9, 2014, injury. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated March 15, 2017. On appeal, Mr. Cullum, by Edwin Pancake, his attorney, asserts that the evidence of record clearly demonstrates that the requested permanent spinal cord stimulator is necessary for the ongoing treatment of the October 9, 2014, injury. Huntington Alloys Corporation, by Steven Wellman, its attorney, asserts the evidence of record clearly demonstrates that the spinal cord stimulator at issue is being utilized for the treatment of pre-existing, non-compensable degenerative conditions.

The Office of Judges found that Dr. Mukkamala concluded that Mr. Cullum had reached maximum medical improvement and was in no further need of treatment by December 31, 2014, which is nearly two years prior to the date on which authorization of a permanent spinal cord stimulator was requested. Additionally, the Office of Judges found that Dr. Bailey concluded that Mr. Cullum had reached maximum medical improvement and was in no further need of treatment approximately one year prior to the authorization request. Moreover, the Office of Judges noted that Dr. Bailey attributed Mr. Cullum's current condition to non-compensable degenerative changes. The Office of Judges therefore concluded that the evidence of record demonstrates that the use of the requested permanent spinal cord stimulator is aimed at the treatment of non-compensable conditions and should not be authorized. 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.

¹ The evidence of record contains no indication that authorization for the trial spinal cord stimulator was requested.

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