

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROBERT W. SMITH,
Claimant Below, Petitioner

vs.) **No. 17-0404** (BOR Appeal No. 2051615)
(Claim No. 2014034019)

WEST VIRGINIA UNIVERSITY,
Employer Below, Respondent

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

MEMORANDUM DECISION

Mr. Smith disagrees with the permanent partial disability rating he received for his workers' compensation injuries, and believes that he should continue to be treated with the medication Celebrex. The claims administrator denied the authorization request for the medication Celebrex on February 17, 2016. Mr. Smith was granted a 7% permanent partial disability award on March 31, 2016. The Workers' Compensation Office of Judges affirmed the decisions of the claims administrator on September 26, 2016. This appeal arises from the Board of Review's Final Order dated March 20, 2017, in which the Board affirmed the September 26, 2016, Decision 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. Upon consideration of the standard of review, the briefs, and the record presented, we affirm the decision of the Board of Review.

Mr. Smith worked as a Residence Assistant for West Virginia University's Potomac State College, when he suffered an occupational injury on February 10, 2014. Mr. Smith slipped and fell on a patch of ice while making rounds at a residence hall. A Report of Injury was submitted on May 14, 2014, and signed by Susan Schmitt, M.D., stating Mr. Smith sustained injuries to the left knee, right shoulder, left wrist, and right ankle. The claims administrator held the claim compensable by Order dated May 23, 2014.

An MRI taken on June 6, 2014, revealed a tear at the mid-boy and posterior limb of the medial meniscus with meniscal cyst. Myxoid degeneration was also observed at the anterior line of the lateral meniscus without a definite tear. Mr. Smith underwent a left knee arthroplasty with partial medial meniscectomy and chondroplasty of the trochlea on July 24, 2014. The surgery was performed by Tom Ghobrial, M.D., an orthopedist.

Joseph Grady, M.D., evaluated Mr. Smith on July 21, 2015. Dr. Grady diagnosed status-post left knee partial medial meniscectomy and chondroplasty; a resolved left wrist sprain; right shoulder pain with rotator cuff tendinitis without a definite tear; and a right ankle myofascial strain. At the time of evaluation, Dr. Grady did not believe that Mr. Smith had reached his maximum degree of medical improvement, as Ms. Smith presented with mild tenderness and discomfort. Physical therapy was recommended to treat the right shoulder and left ankle.

Mr. Smith was treated at Tri-State Orthopedics on August 12, 2015, for intermittent left knee pain. Amanda L. Ferrante, PA-C, noted that Mr. Smith had a prior arthroscopy, knee injections, Celebrex medication, a knee sleeve and a hinged knee brace. He presented with tenderness at the medial joint line of the left knee and lower leg joint effusion. Ms. Ferrante recommended a cortisone injection for the diagnosis of osteoarthritis.

Mr. Smith returned to Dr. Grady on November 17, 2015, for a second medical evaluation. Dr. Grady listed the same compensable conditions as found in his previous report, which included right shoulder cuff tendinitis; status-post left knee partial medial meniscectomy and chondroplasty superimposed on degenerative changes; a left ankle sprain; and a resolved left wrist sprain. Dr. Grady believed that Mr. Smith was at his maximum degree of medical improvement, but failed to associate any degenerative changes to the February 10, 2014, injury. Utilizing the American Medical Association's, *Guides to the Evaluation of Permanent Impairment*, (4th ed, 1993), Dr. Grady recommended 7% whole person impairment for all of his compensable conditions. Dr. Grady found 2% whole person impairment for the right shoulder; 0% whole person impairment for the left wrist; 1% impairment of the whole person for the left ankle; and 4% impairment of the whole person for the left knee. Combining the impairments, Dr. Grady concluded Mr. Smith had 7% whole person impairment rating for the injuries he sustained on February 10, 2014.

In an office note dated December 13, 2015, Susan Schmitt, M.D., diagnosed Mr. Smith with a rotator cuff sprain, a wrist sprain, ankle pain, and unspecified derangement of the medial meniscus. Dr. Schmitt requested a continuation of the use of Celebrex to treat his pain. Dr. Schmitt requested authorization of Celebrex to see if workers' compensation would cover the medication because Mr. Smith had been paying for the medication out-of-pocket. Dr. Schmitt noted that his orthopedist was considering a total left knee replacement.

James Dauphin, M.D., reviewed Mr. Smith's medical records and issued a report dated January 6, 2016. Dr. Dauphin stated that, in his opinion, Mr. Smith was currently being treated for background degenerative changes, and, as such, the requested treatment should not be approved for payment. Dr. Dauphin noted that he had returned to work, and it had been several months since treatment. Thus, Dr. Dauphin recommended that the authorization request for the medication Celebrex be denied. Based on Dr. Dauphin's report, the claims administrator entered an Order dated January 13, 2016, which denied Dr. Schmitt's request for continued payment of Celebrex. Mr. Smith filed a grievance to the claims administrator's Order. By Grievance Board Decision dated February 17, 2016, the January 13, 2016, denial of continued payment of Celebrex was affirmed. Mr. Smith protested.

On September 26, 2016, the Office of Judges issued an Order concluding that Mr. Smith did not prove by a preponderance of the evidence that the medication Celebrex is reasonably required medical treatment for an injury in this claim. The Office of Judges also determined that Mr. Smith had not shown that he is entitled to an amount greater than the 7% permanent partial disability award previously granted. In rendering its decision, the Office of Judges relied upon the opinion of Dr. Grady, who found Mr. Smith to be at his maximum degree of medical improvement, with 7% whole person impairment. Dr. Grady believed that any symptoms or future treatment that Mr. Smith would need would be for pre-existing arthritic conditions. Because Mr. Smith failed to submit medical evidence refuting Dr. Grady's opinion, the Office of Judges also denied the request for Celebrex as a treatment option. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated March 20, 2017.

On appeal, Mr. Smith asserts that he is entitled to a greater permanent partial disability award for his work-related injuries. He also believes that he should be treated with the medication Celebrex. The record suggests that Mr. Smith has reached his maximum medical improvement, without a need for additional care. The record also supports the position that the authorization for the use of the medication Celebrex is not reasonable and necessary treatment in this claim. The only medical opinion in the record in regards to impairment is from Dr. Grady, who recommended a 7% permanent partial disability award. There is no evidence in the record that indicates that Mr. Smith is entitled to a greater award than the one granted to him.

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