

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ADAM Q. FARLEY,
Claimant Below, Petitioner

vs.) **No. 18-0474** (BOR Appeal No. 2052298)
(Claim No. 2017003223)

APPALACHIAN AGGREGATES, LLC,
Employer Below, Respondent

FILED
November 15, 2018

EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Adam Q. Farley, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Appalachian Aggregates, LLC, by H. Dill Battle, III, its attorney, filed a timely response.

The issue on appeal is additional compensable conditions and temporary total disability benefits. The claims administrator closed the claim for temporary total disability benefits on February 2, 2017. On March 7, 2017, the claims administrator denied the addition of neck pain, cervical radiculopathy, and sprained shoulder to the claim. The Office of Judges affirmed the decisions in its October 20, 2017, Order. The Order was affirmed by the Board of Review on April 24, 2018. 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. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion.

Mr. Farley, a loader operator, was injured in the course of his employment on August 1, 2016, when the loader he was driving was jarred. In the employees' and physicians' report of injury, Mr. Farley stated that the injury occurred at work but he did not know the exact date. The physician's section listed the injury as cervical sprain and left shoulder sprain. Mr. Farley was to return to work the following day. Mr. Farley sought treatment from MedExpress the day the injury occurred. He reported numbness and pain in his neck after a work-related whiplash injury. A cervical CT showed only a muscle spasm. He was diagnosed with sprain of joints and

ligaments of the neck. On August 4, 2016, he returned for follow up. His neck range of motion was decreased and physical therapy was recommended. The claim was held compensable for neck sprain on August 12, 2016.

An August 26, 2016, treatment note by MedExpress indicates Mr. Farley was seen for follow up for his neck injury. His neck sprain was noted along with radiculopathy in the cervical spine. Cervical range of motion was normal. He was on modified duty. A September 14, 2016, cervical MRI showed no evidence of disc herniation, stenosis, or neuroforaminal narrowing. Mr. Farley returned to MedExpress on October 4, 2016, and was diagnosed with cervical radiculopathy. He was to follow up with a specialist. Mr. Farley underwent an EMG on November 21, 2016. The results were normal studies of both upper extremities.

On November 26, 2016, Mr. Farley returned to MedExpress. The note indicates he had physical therapy which helped his neck pain, but therapy was cut short and his pain worsened. On December 29, 2016, he reported numbness, pain, and weakness in the upper extremities. His neck pain was worsening because he stopped physical therapy a month prior. The diagnosis was neck pain.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation on January 4, 2017, in which he opined that Mr. Farley had reached maximum medical improvement for the compensable injury. He stated that no further care was necessary and that Mr. Farley could manage with a home exercise program. Dr. Mukkamala found no indication for referral to a neurosurgeon. Dr. Mukkamala assessed 3% whole person impairment which was adjusted to 5% per Cervical Category II of West Virginia Code of State Rules §85-20-E (2006).

A diagnosis update from MedExpress was completed on January 10, 2017, and indicated that Mr. Farley had neck pain with secondary sprain/strain of the cervical region, cervical radiculopathy, and shoulder sprain. He presented with a whiplash type injury while operating a loader in August of 2016. Cervical X-rays and an MRI were negative. Mr. Farley reported lumbar pain but it was not added to the diagnosis update and did not appear to be related to the compensable injury.

Rebecca Thaxton, M.D., performed a physician review on January 12, 2017, in which she was asked to determine if payment for physical therapy and a neurosurgical referral should be authorized. She opined that neither should be authorized and that Dr. Mukkamala's recommendation of 5% impairment was reliable. Dr. Thaxton found that the MRI showed no cervical spine abnormalities. The October 4, 2016, MedExpress treatment note diagnosed cervical radiculopathy and recommended physical therapy; however, the physical exam did not indicate cervical radiculopathy. Dr. Thaxton noted that on December 29, 2016, Mr. Farley was treated at MedExpress and it was noted that he had worsening neck pain and numbness in both arms and his face. Dr. Thaxton found that it was not mentioned in that note that the November 21, 2016 EMG found no evidence of radiculopathy or that the cervical MRI was negative. Further, she determined that the symptoms were not specific to radiculopathy and therefore, the request for referral to a neurosurgeon was not claim related. She concluded that Mr. Thaxton had exceeded the treatment duration guidelines of West Virginia Code of State Rules §85-20-35.5

(2006). Dr. Mukkamala found Mr. Farley to be at maximum medical improvement and any request for additional treatment was not necessary. Dr. Thaxton agreed. The claims administrator granted a 5% permanent partial disability award on January 24, 2017.

In a January 25, 2017, physician review, James Dauphin, M.D., was asked to review the diagnosis update to add neck pain, cervical radiculopathy, and shoulder pain to the claim. Dr. Dauphin recommended they not be added to the claim. He noted that the claim was compensable for cervical sprain/strain and the cervical MRI and EMG showed no abnormalities. He noted that the October 4, 2016, MedExpress treatment note diagnosed cervical radiculopathy but the examination that day did not find signs of cervical radiculopathy. Mr. Farley was seen again on December 29, 2016, and had numbness in the arms, face, and leg. The normal EMG was not mentioned, nor was the negative cervical MRI. Dr. Dauphin determined that Mr. Farley had exceeded the treatment duration guidelines of West Virginia Code of State Rules §85-20-35.5. Based on all of the evidence, Dr. Dauphin concluded that Mr. Farley is now being treated for noncompensable conditions and further treatment should be denied. The claims administrator closed the claim for temporary total disability benefits on February 2, 2017. The claims administrator denied the addition of neck pain, cervical radiculopathy, and sprained shoulder to the claim on March 7, 2017.

In a February 13, 2017, treatment note, Kyle Muscari, M.D., diagnosed cervicgia. On February 27, 2017, he diagnosed neck pain and cervical radiculopathy. It was noted that Mr. Farley's neck pain and radiculopathy were chronic conditions. On March 28, 2017, Dr. Muscari read Mr. Farley's cervical MRI and found that there was no evidence of disc herniation, spinal canal stenosis, or neuroforaminal narrowing. He diagnosed neck pain, cervical radiculopathy, and shoulder joint pain. Lana Christiano, M.D., a neurosurgeon, evaluated Mr. Farley on April 7, 2017, and found that the cervical MRI was unremarkable. She recommended conservative treatment only.

In an April 26, 2017, referral order, Dr. Muscari requested that Mr. Farley be seen by a neurologist. He listed the current problems as shoulder joint pain and neck pain. He noted that Mr. Farley has chronic problems including neck pain, cervicgia, cervical radiculopathy, shoulder pain, and dizziness. In a May 5, 2017, physician review, Syam Stoll, M.D., was asked to determine if a neurological evaluation should be authorized. He found that the only accepted diagnosis in the claim is neck sprain. A cervical MRI showed no findings. An EMG was negative. Dr. Stoll found that Mr. Farley had reached maximum medical improvement and that any further treatment would be for noncompensable conditions. The claims administrator denied a request for a left shoulder MRI and a referral to a neurologist on May 11, 2017.

Dr. Muscari wrote a letter on June 16, 2017, in which he stated that he was treating Mr. Farley for neck pain, cervical radiculopathy, and shoulder pain. Mr. Farley had not been released to return to work because the source of the pain was unidentified. A cervical MRI showed no findings that would be causing the symptoms. Dr. Muscari opined that he was still temporarily and totally disabled. Dr. Muscari further opined that Mr. Farley needed a left shoulder MRI.

In an August 11, 2017, supplemental report, Dr. Mukkamala noted that Mr. Farley had reached maximum medical improvement. He opined that the compensable injury was a soft tissue injury. Mr. Farley originally reported only neck pain. Left shoulder and back symptoms were alleged in later reports. Dr. Mukkamala opined that the denial of the addition of cervical radiculopathy and shoulder sprain was proper. Dr. Mukkamala noted that Dr. Hamilton diagnosed cervical radiculopathy on October 4, 2016. However, he noted normal cervical range of motion and normal strength. Dr. Mukkamala found that Dr. Hamilton's diagnosis was not supported by his own findings. Though Mr. Farley complained of left shoulder pain, it was not documented in the report of injury. An EMG showed no evidence of radiculopathy and Dr. Mukkamala found no evidence of radiculopathy in his examination. Dr. Mukkamala stated that there was no credible, objective evidence of cervical radiculopathy and no objective evidence of a shoulder injury.

After a review of the evidence, the Office of Judges affirmed the claims administrator's decisions denying the addition of neck pain, cervical radiculopathy, and sprained shoulder to the claim and closing the claim for temporary total disability benefits on October 20, 2017. It found that Mr. Farley reached maximum medical improvement for the compensable cervical sprain by January 4, 2017. The Office of Judges noted that when he originally reported his injury, he did not mention the shoulder at all. Dr. Mukkamala opined that the shoulder symptoms were likely coming from the neck. Though Dr. Hamilton diagnosed cervical radiculopathy, his diagnosis was not supported by any objective medical evidence, including his own examination of Mr. Farley. The Office of Judges also found that Mr. Farley's EMG was negative for cervical radiculopathy. Because Mr. Farley reached maximum medical improvement for the only compensable condition in the claim, the closure of the claim for temporary total disability benefits was affirmed. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on April 24, 2018.

After review, we agree with the Board of Review's decision insofar as it denied the addition of neck pain and cervical radiculopathy to the claim. Though Mr. Farley reported symptoms of cervical radiculopathy, objective medical evaluations and EMG testing showed no evidence of the condition. Further, neck pain is a symptom, not a diagnosis. It was also therefore properly denied. However, the Board of Review's decision was incorrect in its denial of the addition of shoulder sprain to the claim. The Office of Judges and Dr. Mukkamala were both incorrect in their assertions that Mr. Farley did not initially report left shoulder pain. It was noted on the employees' and physicians' report of injury as well as the initial treatment note on the day of the injury. Further, Dr. Dauphin, in his physician review, failed to address the left shoulder. The claim should be held compensable for left shoulder sprain. Because Mr. Farley has not been found to have reached maximum medical improvement for his left shoulder injury and Dr. Muscari opined that he remained temporarily and totally disabled in part due to his left shoulder injury, temporary total disability benefits were improperly suspended.

For the foregoing reasons, we affirm the decision of the Board of Review insofar as it denied the addition of neck pain and cervical radiculopathy to the claim. We reverse the decision insofar as it denied the addition of left shoulder sprain to the claim and closed the claim for temporary total disability benefits. We remand the case with instructions to hold the claim

compensable for left shoulder sprain and to authorize temporary total disability benefits as indicated.

Affirmed, in part, and Reversed and Remanded, in part.

ISSUED: November 15, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Elizabeth D. Walker

Justice Tim Armstead

Justice Evan H. Jenkins

Justice Paul T. Farrell sitting by temporary assignment