

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 13, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**HEALTHSOUTH CORPORATION,
Employer Below, Petitioner**

vs.) **No. 18-0801** (BOR Appeal No. 2052821)
(Claim No. 2018012804)

**PAMELA J. CRAMER,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner HealthSouth Corporation, by Jane Ann Pancake and Jeffrey B. Brannon, its attorneys, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pamela J. Cramer, by Robert L. Stultz, her attorney, filed a timely response.

The issue on appeal is compensability. The claims administrator rejected the claim on December 14, 2017. The Office of Judges reversed the decision in its March 23, 2018, Order and held the claim compensable for lumbosacral ligament sprain. The Order was affirmed by the Board of Review on August 17, 2018.

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, 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.

Ms. Cramer, an environmental service aide, alleges that she was injured in the course of her employment on November 23, 2017. The Employees' and Physicians' Report of Injury indicates Ms. Cramer injured her left lower back and hip while emptying trash from a patient's bathroom. The physician's section was completed at WVU Urgent Care and indicates Ms. Cramer sustained an injury that aggravated a prior injury/disease. The diagnoses were listed as sacrococcygeal disorders and sciatica. A Workers' Compensation Injury/Illness Investigation Report completed the day after the injury indicates Ms. Cramer injured her left lower back and hip while pulling on a trash bag. Her supervisor stated that the accident findings were consistent with her report of the events.

Ms. Cramer sought treatment from Sara Farjo, D.O., on November 26, 2017. She reported that she felt a sharp pain in her left hip while pulling on a heavy trash bag. She stated that the pain radiated into her foot and has been constant since that time. Dr. Farjo diagnosed sciatica, sacroiliac joint dysfunction, or piriformis syndrome. She referred Ms. Cramer for an orthopedic evaluation. A physical therapy note the following day indicates Ms. Cramer reported pain over the weekend after trying to lift ice and water at work. She was diagnosed with low back pain and sciatica.

A November 28, 2017, treatment note by Anna Allen, M.D., indicates Ms. Cramer reported a history of occasional lower back pain on the left side for the past two years. She had experienced a flair-up earlier in the month. Dr. Allen diagnosed lumbosacral ligament sprain and left-sided sciatica. She characterized the injury as “an acute injury in the context of a chronic back problem.” On December 12, 2017, Ms. Cramer reported that physical therapy had helped her muscle spasms but she still had left leg pain. Her MRI showed a central and left central disc herniation with cephalic extrusion at L4-5 and a herniated disc compressing the L4 nerve root significantly. By February 1, 2018, Ms. Cramer had shown significant improvement with physical therapy and traction.

Ms. Cramer testified in a deposition on February 12, 2018, that she pulled on a heavy trash bag at work on November 23, 2017, and felt immediate pain in her back. She returned to work on January 4, 2018, and is now working full time on modified duty. Ms. Cramer stated that she still has occasional left leg pain and numbness. She admitted she had one back injury prior to the compensable injury at issue. The injury occurred two and a half years prior, and she did not seek medical treatment. Prior to the compensable injury, she had no back pain. She was treated for sciatica with physical therapy on November 7, 2017. In a February 22, 2018, expedited hearing before the Office of Judges, counsel for the employer contended that Ms. Cramer failed to provide information regarding back injuries in 2002, 2007, and 2009.

The claims administrator rejected the claim on December 14, 2017. The Office of Judges reversed the decision and held the claim compensable for lumbosacral ligament sprain in its March 23, 2018, Order. It found that though Ms. Cramer may have had prior lower back injuries and was participating in physical therapy up to the day before the injury occurred, she was still capable of performing all of her work duties prior to the injury at issue. The Office of Judges further determined that the most reliable and comprehensive reports of record are those of Dr. Allen, Ms. Cramer’s treating physician. Dr. Allen opined that Ms. Cramer sustained “an acute injury in the context of a chronic back problem.” The Office of Judges found nothing in the workers’ compensation statute which prevents a person with a preexisting condition from sustaining a new injury. The Office of Judges also found no medical evidence conflicting with Dr. Allen’s finding that Ms. Cramer sustained an acute injury on November 23, 2016. The Office of Judges determined that though Ms. Cramer’s MRI showed a herniated disc, there is no evidence that the condition is the result of her compensable injury, and Dr. Allen gave no opinion on the origin of the herniated disc. The Office of Judges therefore concluded that Ms. Cramer sustained a compensable injury in the course of her employment that resulted in a lumbosacral ligament sprain. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on August 17, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The only physician of record to offer an opinion on the causality of Ms. Cramer's symptoms is Dr. Allen. Dr. Allen opined that though she has a chronic back condition, Ms. Cramer sustained a lumbosacral ligament sprain on top of her preexisting problems. The employer presented no medical opinion disagreeing with Dr. Allen's findings.

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: September 13, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker

Justice Margaret L. Workman

Justice Tim Armstead

Justice Evan H. Jenkins

Justice John A. Hutchison