

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**RHONDA MAYNOR,
Claimant Below, Petitioner**

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

vs.) **No. 18-0912** (BOR Appeal No. 2052813)
(Claim No. 2017014927)

**RALEIGH COUNTY BAORD OF EDUCATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Rhonda Maynor, by Counsel Reginald D. Henry, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Raleigh County Board of Education, by Counsel Steven K. Wellman, filed a timely response.

The issue on appeal is additional compensable conditions. The claims administrator denied the addition of lumbar intervertebral disc disorder and lumbar radiculopathy to the claim on February 13, 2017. The Office of Judges affirmed the decision in its April 13, 2018, Order. The Order was affirmed by the Board of Review on September 20, 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. Maynor, a school aide, injured her lower back in the course of her employment on November 28, 2016, when she bent over to wipe a child's face. A lumbar MRI performed on December 1, 2016, showed mild retrolisthesis of L2 on L3. Ms. Maynor sought treatment from Integrity Chiropractic and, on December 15, 2016, it was noted that she complained of low back, mid back, and neck pain. She was diagnosed with lumbosacral sprain/strain with muscle spasms and retrolisthesis of L2 on L3; bulging discs from L2-L5; and disc degeneration at L2-3. It was noted that she had reduced range of motion at L2-3 with tenderness.

Ms. Maynor had a history of lower-back pain. Treatment notes by Prakash Puranik, M.D., indicate Ms. Maynor presented on July 20, 2015, with lower back, right buttock, right hip, and left knee pain. He diagnosed lumbago. On July 27, 2015, Dr. Puranik diagnosed osteoarthritis of the pelvis, hip, and thigh. On November 11, 2016, Ms. Maynor was diagnosed with sacroilitis.

The Employees' and Physicians' Report of Injury was completed on December 16, 2016. Ms. Maynor reported that she injured her lower back while bending over. The diagnosis was listed as lumbar sprain/strain. A lumbar MRI was performed on January 13, 2016, and showed bulging discs at L2-3, L3-4, and L4-5. The claim was held compensable for lumbar sprain/strain on February 3, 2017. Rocky Sexton, D.C., Ms. Maynor's treating physician, requested that lumbar intervertebral disc disorder and lumbar radiculopathy be added to the claim based upon an MRI on February 3, 2017. The claims administrator denied the request on February 13, 2017.

On March 7, 2017, John Schmidt III, M.D., evaluated Ms. Maynor. She reported back and right-leg pain. She stated that since her compensable injury, she has experienced significant back and right-leg pain. Dr. Schmidt's examination showed limited range of motion in the spine. Dr. Schmidt reviewed the lumbar MRI and found nothing more than minimal degenerative disc disease throughout the lumbar spine. He diagnosed low-back pain, bilateral-leg pain, and lumbar degenerative disc disease.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation on November 14, 2017, in which he noted that Ms. Maynor reported lower-back and bilateral-leg pain. He diagnosed an exacerbation of preexisting lower-back pain. He noted that the records show she had experienced back pain since 2015. Dr. Mukkamala opined that the lumbar intervertebral disc displacement was degenerative, preexisting, and not related to the compensable injury. Dr. Mukkamala further found that though Ms. Maynor reported symptoms of radiculopathy, her deep tendon reflexes, motor examination, and sensory examination were all normal.

The Office of Judges affirmed the claims administrator's decision in its April 13, 2018, Order. It found that Dr. Sexton requested that the additional conditions be added to the claim based on the MRI; however, neither he nor any other physician of record offered an explanation as to how the MRI findings were caused by the compensable injury. The Office of Judges could not determine if Dr. Sexton was aware of Ms. Maynor's preexisting lower back issues. The Office of Judges found that she was evaluated by Drs. Schmidt and Mukkamala. Dr. Schmidt, a neurosurgeon, reviewed the MRI and found only minimal degenerative changes in the lumbar spine. He diagnosed low-back pain, bilateral-leg pain, and degenerative-disc disease. He noted that his examination showed normal lower extremities. Dr. Mukkamala also found normal lower extremities during his examination. He stated that there was no objective evidence of radiculopathy and further opined that Ms. Maynor's disc displacement was the result of degenerative changes, not the compensable injury. The Office of Judges found that his report indicates he reviewed her medical history prior to the compensable injury. The Office of Judges questioned whether the simple act of bending over was even capable of causing intervertebral disc displacement and radiculopathy. The Office of Judges concluded that Drs. Mukkamala and Schmidt found that Ms. Maynor suffered from preexisting degenerative changes, which are not related to the compensable injury. She received treatment for low-back and right-leg pain seventeen days before the

compensable injury. She failed to show that the requested diagnoses should be added to the claim. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on September 20, 218.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Ms. Maynor has degenerative changes that did not result from the simple act of bending over. The record shows that these problems preexisted the compensable injury and are therefore not compensable.

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