

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RANDY CLARK,
Claimant Below, Petitioner

vs.) **No. 19-0533** (BOR Appeal No. 2053712)
(Claim No. 2017020926)

MURRAY AMERICAN ENERGY, INC.,
Employer Below, Respondent

FILED

July 31, 2020

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

MEMORANDUM DECISION

Petitioner Randy Clark, by Counsel J. Thomas Greene Jr., appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Murray American Energy, Inc., by Counsel Denise D. Pentino and Aimee M. Stern, filed a timely response.

The issue on appeal is temporary total disability benefits. The claims administrator closed the claim for temporary total disability benefits on January 26, 2018. The Office of Judges affirmed the decision in its November 20, 2018, Order. The Order was affirmed by the Board of Review on May 8, 2019.

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.

Mr. Clark, a coal miner, was injured in the course of his employment on February 22, 2017. Treatment notes from Wheeling Hospital Emergency Department that day indicate Mr. Clark was driving when a rock fell onto his right wrist and left knee. He was diagnosed with left knee and right hand contusions. A February 24, 2017, treatment note by C. Clark Milton, D.O., indicates right hand x-rays showed no fractures. A knee x-ray showed possible fluid. It was noted that Mr. Clark was going to undergo knee surgery. Examination revealed swelling on the left thigh and right hand thenar eminence. Dr. Milton diagnosed right thumb contusion, particularly to the thenar eminence and distal femur soft tissue contusion. Dr. Milton referred Mr. Clark for an MRI to assess the distal femur and opined that he was unable to return to work.

A left femur MRI was performed on February 28, 2017, and showed contusion of the vastus medialis muscle near the knee as well as a joint effusion at the knee. The claim was held compensable for left knee contusion and right hand contusion on March 10, 2017. Mr. Clark was granted temporary total disability benefits from February 23, 2017, through March 17, 2017. On March 15, 2017, a right finger MRI showed no fractures and some soft tissue swelling. It was noted that the findings were compatible with contusion and intramuscular tears.

Mr. Clark sought treatment from Ross Tennant, F.N.P., on March 17, 2017. The note indicates Mr. Clark reported right hand pain and decreased range of motion as well as pain in the medial left knee with instability. Mr. Tennant diagnosed right hand and left thigh contusions and referred Mr. Clark to a hand surgeon. An MRI of the left knee was requested to assess possible internal derangement. Mr. Tennant stated that Mr. Clark was unable to return to work.

A left knee MRI was performed on April 2, 2017, and showed a medial meniscus tear with moderate joint effusion. On April 4, 2017, Mr. Clark was treated at Plastic Surgery, Inc., for right hand pain. Mr. Clark was diagnosed with contusion of the dorsal interosseous muscle in the thumb and index finger. Physical therapy was recommended. That same day, Mr. Clark returned to Mr. Tennant, who noted that Mr. Clark was undergoing left knee physical therapy. He reported continued left knee pain and instability. Mr. Tennant diagnosed right hand and left thigh contusions. It was noted that Mr. Clark was referred to orthopedics and remained unable to work.

An April 10, 2017, treatment note by Hector Marcano, M.D., indicates Mr. Clark was seen for hand/occupational therapy evaluation for a right hand contusion. He had not yet returned to work and reported difficulty with activities of daily living. The assessment was right hand pain and mobility issues as well as right thumb pain. Mr. Clark was seen by Michael Rytel, M.D., on April 24, 2017, for left knee symptoms. Dr. Rytel diagnosed left knee medial meniscus tear due to a work-related injury and recommended surgery.

A right hand MRI showed improving soft tissue swelling with possible mild tenosynovitis on May 19, 2017. On June 1, 2017, Kia Washington, M.D., evaluated Mr. Clark and recommended an EMG to assess right wrist numbness and tingling. She also recommended an MRI. Dr. Washington opined that the etiology of the symptoms was unclear but that they clearly related to the work injury. A right wrist x-ray showed no acute abnormalities.

Mr. Clark underwent left knee surgery on June 7, 2017. The post-operative diagnosis was medial meniscus tear with chondrosis of the patella. Mr. Clark was evaluated at Hudson Premier Physical Therapy and Fitness Center on June 13, 2017, for left knee meniscus derangement, pain, and stiffness. He was to undergo therapy three times a week for four weeks. A right arm EMG was performed on June 30, 2017, and showed normal results with no evidence of neuropathy.

David Soulsby, M.D., performed an independent medical evaluation on July 17, 2017, in which he determined that Mr. Clark had not yet reached maximum medical improvement for either his right hand or left knee. Dr. Soulsby assessed right hand contusion with crush injury, left quadriceps contusion, torn left knee medial meniscus, patella chondromalacia, and post-operative

left knee incision infection. Dr. Soulsby recommended stress imaging of the hand joints to check for instability. If no instability was found, he recommended immobilization, medication, and, eventually, aggressive physical therapy. Dr. Soulsby opined that bone contusions were difficult to manage. Regarding the left knee, he recommended continued wound treatment. He stated that Mr. Clark was capable of sedentary work.

Physical therapy treatment notes indicate Mr. Clark was treated for right wrist and hand pain as well as complex regional pain syndrome on September 1, 2017. Skilled therapy was recommended, and his prognosis was good. On September 7, 2017, Dr. Rytel noted that Mr. Clark reported continued left knee pain following surgery. The impression was left medial meniscus tear, left knee pain, and complications of surgery. Dr. Rytel stated that the infection at the surgical site had persisted for too long to be a normal reaction to sutures. He recommended an arthroscopy to ensure that there was nothing interarticular occurring as well as debridement of the portal sites. Mr. Clark underwent left knee debridement of the portal sites and a partial medial meniscectomy on October 4, 2017. The post-operative diagnoses were left knee suture reaction and medial meniscus tear.

Mr. Clark returned to Dr. Rytel on November 16, 2017. Dr. Rytel found that Mr. Clark's portals were healing well, and he had a normal gait. The diagnoses were complications of prior procedure and left knee medial meniscus tear. It was noted that Mr. Clark was doing much better and was released to return to light duty. The claims administrator approved continued physical therapy for six weeks on December 13, 2017.

Dr. Soulsby performed an independent medical evaluation on December 14, 2017, in which he found that Mr. Clark had reached maximum medical improvement. Dr. Soulsby opined that he would benefit from continued physical therapy to improve strength. He also recommended continued use of a right wrist compression glove. Dr. Soulsby found no left knee impairment and 12% right hand impairment.

In a December 21, 2017, letter, Dr. Washington stated that Mr. Clark was released to return to medium duty work. On January 11, 2018, Dr. Rytel noted that Mr. Clark was walking with a normal gait. He had no fluid in the knee and the portals were completely healed with no sign of infection. Dr. Rytel stated that Mr. Clark had finished physical therapy and could return to full duty work.

On January 12, 2018, Mr. Tennant stated that Mr. Clark was able to perform full flexion and extension of his right thumb and fingers as well as his left knee. The impression was right hand contusion and left medial meniscus tear. Mr. Tennant released Mr. Clark to light duty work but recommended that he continue with hand therapy. The claims administrator closed the claim for temporary total disability benefits on January 26, 2018.

A March 9, 2018, treatment note by Mr. Tennant indicates Mr. Clark reported continued right hand improvement. It was noted that he was not working. Mr. Tennant stated that Mr. Clark could likely return to his regular work after his appointment with Dr. Washington on April 6, 2018. Mr. Tennant completed a disability status form stating Mr. Clark was able to return to work with

restrictions. On March 27, 2018, Mr. Clark reported that he was released to return to full duty from his plastic surgeon. His right hand symptoms were still improving. It was noted that Mr. Clark was not currently working but that he was capable of performing all of his previous duties. Mr. Tennant stated that Mr. Clark was able to work without restrictions.

Mr. Clark testified in a June 27, 2018, deposition that his temporary total disability benefits were suspended on December 19, 2017, but he had not yet returned to work since he was still under the care of physicians who had not yet released him. He returned to work on March 28, 2018. Mr. Clark stated that he was still having difficulties with his right hand and left knee.

In its November 20, 2018, Order, the Office of Judges affirmed the claims administrator's closure of the claim for temporary total disability benefits. It determined that Mr. Clark was found to be at maximum medical improvement on December 14, 2017, by Dr. Soulsby. Following that evaluation, he received no substantial treatment. Both Drs. Soulsby and Rytel found that Mr. Clark had reached maximum medical improvement. Further, Dr. Washington determined on December 21, 2017, that he could return to medium duty work, and Mr. Clark testified that he had seen no improvement in his condition since he was evaluated by Dr. Soulsby on December 14, 2017. Based on a preponderance of the evidence, the Office of Judges concluded that the claim was properly closed for temporary total disability benefits on January 26, 2018. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on May 8, 2019.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Drs. Soulsby, Rytel, and Washington, as well as Mr. Tennant, all determined that Mr. Clark could return to work. Pursuant to West Virginia Code § 23-4-7a (2019), temporary total disability benefits will cease when the claimant has reached maximum medical improvement, has been released to return to work, or has returned to work, whichever occurs first. Since Mr. Clark was released to return to work and found to be at maximum medical improvement, the claim was properly closed for temporary total disability benefits.

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: July 31, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison