

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

KENDALL PHILLIPS,
Claimant Below, Petitioner

vs.) No. 19-1001 (BOR Appeal No. 2054261)
(Claim No. 2018009000)

TIMBERLAND CONSTRUCTION, INC.,
Employer Below, Respondent

FILED

December 11, 2020
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Kendall Phillips, by Counsel Patrick K. Maroney, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Timberland Construction, Inc., by Counsel Jeffrey B. Brannon, filed a timely response.

The issue on appeal is temporary total disability. The claims administrator closed the claim for temporary total disability benefits on May 17, 2018. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decision in its May 10, 2019, Order. The Order was affirmed by the Board of Review on October 4, 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.

August 12, 2017, treatment notes from Angel Medical Center Emergency Department indicate Mr. Phillips presented with neck pain, back pain, and sternum pain after he flipped a track hoe a few weeks prior. He was diagnosed with back and neck pain. Mr. Phillips sought treatment from Tallulah Community Health on August 31, 2017, for neck, back, and spine pain following a July 26, 2017, work accident. He was diagnosed with chronic neck pain and low back ache. A thoracic MRI was performed on September 8, 2017, which showed old mild compression deformities at T3, T4, and T6; mild disc protrusions from T7-L1; mild degenerative changes; and old compression fractures at T2, T4, and T5.

Mr. Phillips was treated by his treating physician Glenn Trent, M.D., on September 14, 2017. Dr. Trent diagnosed chronic thoracic back pain. On October 4, 2017, Dr. Trent stated that Mr. Phillips could not return to work until his next evaluation at the Spine Center. The claim was held compensable for cervical sprain, upper back sprain, chest wall sprain, head contusion, and cervicalgia on October 31, 2017. Mr. Phillips returned to Dr. Trent on November 22, 2017, for neck and thoracic strains. Dr. Trent opined that Mr. Phillips was not able to return to work until after his next appointment.

Mr. Phillips attended physical therapy on October 28, 2017. The treatment note from Pro Motion Rehab indicates Mr. Phillips was treated for pain in his neck and shoulder blades. Mr. Phillips was to attend therapy two to three times per week for six weeks. On January 30, 2018, Mr. Phillips continued to have pain and had not met any of his short-term goals for therapy. Mr. Phillips sought treatment from Dr. Trent on February 7, 2018, and was diagnosed with neck muscle strain, thoracic strain, cervical degenerative disc disease, and thoracic degenerative disc disease. Dr. Trent opined that Mr. Phillips could return to light duty sedentary work.

In a February 23, 2018, treatment note, Pro Motion Rehab indicated Mr. Phillips had not met his short- or long-term goals. On March 6, 2018, he had met some goals, but therapy was recommended for an additional four weeks. On March 20, 2018, Mr. Phillips had met or partially met all of his goals but required an additional four weeks of therapy. Dr. Trent completed a work limitation note on April 4, 2018, stating that Mr. Phillips could return to work with no restrictions. He had reached his maximum medical improvement. The diagnosis was listed as cervical spondylosis.

On April 19, 2018, physical therapy was approved from March 12, 2018, through April 20, 2018. The claims administrator closed the claim for temporary total disability benefits on May 17, 2018. On June 20, 2018, Mr. Phillips was seen at Swain Comprehensive Pain for neck pain due to years of construction work. On July 18, 2018, it was noted that Mr. Phillips had cervical and thoracic pain likely due to facet mediated disease.

Mr. Phillips testified in a deposition on February 28, 2019, that he had no neck injuries or symptoms prior to the compensable injury. He stated that though his lower back pain resolved, he still experiences cervical symptoms. He further stated that he last received temporary total disability benefits on April 4, 2018.

The Office of Judges affirmed the claims administrator's closure of the claim for temporary total disability benefits on May 10, 2019. It found that Mr. Phillips last received temporary total disability benefits on April 4, 2018, when his treating physician, Dr. Trent, found that he had reached maximum medical improvement and could return to full-duty work. Temporary total disability benefits cease when a claimant reaches maximum medical improvement, returns to work, or is released to return to work. Therefore, the Office of Judges affirmed the claims administrator's decision. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on October 4, 2019.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Temporary total disability benefits were properly ended when Mr. Phillips's treating physician found he had reached maximum medical improvement and released him to return to full duty work on April 4, 2018.

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: December 11, 2020

CONCURRED IN BY:

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