

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**EARNEST BUTCHER,**  
**Claimant Below, Petitioner**

**vs.) No. 19-1032** (BOR Appeal No. 2054255)  
(Claim No. 2018008683)

**KANAWHA EAGLE MINING, LLC,**  
**Employer Below, Respondent**

**FILED**

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

**MEMORANDUM DECISION**

Petitioner Earnest Butcher, by Counsel Edwin H. Pancake, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Kanawha Eagle Mining, LLC, by Counsel Patricia E. McEnteer, filed a timely response.

The issues on appeal are compensability and medical benefits. The claims administrator rejected the claim on October 11, 2017. On October 16, 2017, the claims administrator affirmed three decisions denying payment for medical treatment on September 18, 2017; September 22, 2018; and October 6, 2017. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decisions in its April 26, 2019, Order. The Order was affirmed by the Board of Review on October 18, 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. Butcher, a fire boss, alleges that he injured his back when he slipped and fell at work on September 18, 2017. Mr. Butcher has a long history of back problems. He was treated at BMH Family Health from October 29, 2005, through October 2, 2018, for numerous conditions, including thoracolumbar sprain. On October 2, 2018, it was noted that Mr. Butcher suffered from generalized body aches following an injury. It was also noted that he had osteoarthritis.

Mr. Butcher underwent an L4-5 microdiscectomy on December 2, 2011. The History and Physical Report completed prior to surgery indicated Mr. Butcher previously underwent an L5-S1 discectomy in 2007. In July of 2011, Mr. Butcher underwent surgery on T7-8 due to significant disc fractures. In August of 2011, Mr. Butcher developed spontaneous lower back pain with left leg radiation.

Treatment notes by Howard Lafferty, M.D., indicate Mr. Butcher was treated for osteoarthritis starting on April 1, 2015. It was noted on September 12, 2017, that Mr. Butcher was ready to return to work. It was also noted that he had a history of three back surgeries. Treatment notes by Richard Knapp, M.D., indicate Mr. Butcher sustained a lumbar strain on August 26, 2016, with radiculopathy.

A cervical MRI performed on October 11, 2016, showed mild disc bulging with osteophyte formation at C3-4 and C5-6 and minimal disc bulging at C4-5 and C6-7. A lumbar MRI showed minimal disc bulging at L1-L2, mild disc bulging with osteophyte formation at L2-3 and L3-4, a disc protrusion with moderate bulging and osteophyte formation at L4-5, and a disc herniation with moderate bulging and osteophyte formation at L5-S1.

The September 18, 2017, Employees' and Physicians' Report of Injury indicates Mr. Butcher injured his back that day. The physician's section was completed at MedExpress and indicated Mr. Butcher suffered sprains of his neck, upper back, and lower back. It was noted that the injury aggravated a prior injury or disease. The MedExpress treatment note that day indicates Mr. Butcher was treated for pain from his neck to his tailbone resulting from a work injury. Mr. Butcher returned to MedExpress on September 22, 2017. He was unable to work. Physical therapy and referral to a neurosurgeon were recommended. On October 6, 2017, it was noted that Mr. Butcher was treated for his back injury and remained unable to work. Mr. Butcher underwent a lumbar MRI on October 9, 2017, which showed post-operative changes at L4-5, degenerative changes from T12-S1, mild central canal stenosis, and foraminal stenosis ranging from mild to severe.

The claims administrator rejected the claim on October 11, 2017. On October 16, 2017, in three separate decisions, the claims administrator denied payment of medical bills dated September 18, 2017; September 22, 2017; and October 6, 2017. Dwight Saulle, M.D., wrote a letter on November 7, 2017, in which he stated that on September 18, 2017, Mr. Butcher was lifting a heavy cable when he slipped and fell, landing on his back. He developed immediate left shoulder and back pain. A St. Mary's Medical Center history and physical form indicates Mr. Butcher had back surgeries in 2001, 2006, and 2011.

Mr. Butcher testified in a deposition on May 13, 2018, that he was injured when he fell while lifting a cable. He stated that he landed square on his back between his shoulder blades. There were no witnesses to the accident and Mr. Butcher continued to work. He stated that he reported the injury to the safety director at the end of his shift. Mr. Butcher denied any preexisting upper back problems.

Prasadarao Mukkamala, M.D., performed a record review on January 22, 2019, in which he concluded that there was no credible evidence supporting that Mr. Butcher sustained a new injury on September 18, 2017. He found that Mr. Butcher has an extensive history of back pain, including three prior surgeries. Dr. Mukkamala noted that Mr. Butcher experienced intermittent back pain prior to the compensable injury. He concluded that Mr. Butcher experienced an exacerbation of his chronic back pain but did not sustain a new injury as a result of the September 18, 2017, incident.

In a March 26, 2019, statement, Samantha Owens noted that she was the human resources manager when Mr. Butcher was allegedly injured. She asserted that prior to the alleged September 18, 2017, injury, Mr. Butcher expressed concern about the mine he was assigned to due to the slope in the mine. Mr. Butcher performed half of a shift at the mine before the alleged injury. While on short-term disability, Mr. Butcher requested a transfer to a different mine.

The Office of Judges affirmed the claims administrator's rejection of the claim and denial of authorization of medical bills related to the alleged injury in its April 26, 2019, Order. It found that Mr. Butcher alleges an injury to his back as a result of a work-related fall. Mr. Butcher has a history of back problems, including three prior surgeries. The Office of Judges noted that imaging studies showed degenerative changes. Dr. Mukkamala's record review was found to be reliable. He opined that Mr. Butcher did not suffer a new work-related injury and that he likely suffered an aggravation of his preexisting condition. The Office of Judges concluded that it was more likely than not that Mr. Butcher did not sustain a new, compensable injury on September 18, 2017. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on October 18, 2019.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Mr. Butcher has a long history of extensive back issues, including three prior surgeries. Further, there were no witnesses to the alleged injury. Dr. Mukkamala's opinion, that Mr. Butcher merely suffered an aggravation of a preexisting condition, is supported by the evidence of record.

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