

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Phillip R. Ball v. West Virginia Office of Insurance Commissioner/Panther Branch Coal Co.

Ball · No. No. 11-1126 · Decided July 15, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed the denial of a workers' compensation claimant's request for authorization of a lumbar-spine MRI. The court held that the Board of Review materially mischaracterized the evidentiary record, reversed the decision, and remanded with instructions to authorize the MRI.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	July 15, 2013
DOCKET	No. 11-1126
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioner's appeal from a West Virginia Workers' Compensation Board of Review order affirming the denial of authorization for a lumbar-spine MRI.
STANDARD OF REVIEW	The Court reviewed whether the Board of Review's decision was clearly based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 because it presents no substantial question of law.
PARTIES	Phillip R. Ball v. West Virginia Office of Insurance Commissioner, Panther Branch Coal Co.

TOPICS

workers compensation

judicial review of agency action

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review's denial of authorization for a lumbar-spine MRI was based on a material misstatement or mischaracterization of the evidentiary record.
2. Whether the requested lumbar-spine MRI was sufficiently related to Ball's compensable workplace injury to warrant authorization.

HOLDINGS

1. The Board of Review's decision was clearly based on a material misstatement or mischaracterization of particular components of the evidentiary record.
2. The lumbar-spine MRI requested by Dr. Weinsweig was authorized because it was reasonably related to Ball's compensable injury.

KEY QUOTATIONS

"The conclusions of the Board of Review and the Office of Judges are based on a material mischaracterization of the evidence in the record." (2)

"Although the treatment notes of Dr. Weinsweig, indicating that Mr. Ball needs an additional MRI, are based primarily on Mr. Ball's subjective complaints, there is sufficient evidence, considering the record as a whole, that the request is reasonably related to Mr. Ball's compensable injury." (2)

"Therefore, the decision of the Board of Review is reversed, and the case is remanded with instructions to authorize an MRI of Mr. Ball's lumbar spine according to Dr. Weinsweig's March 23, 2010, request." (2)

FACTUAL BACKGROUND

Phillip R. Ball injured his lower back while lifting a rail during his employment with Panther Branch Coal Co. His workers' compensation claim was accepted for a displaced intervertebral disc, and he later underwent lumbar spine surgery. After renewed back pain, his treating physician requested authorization for another lumbar MRI to diagnose the cause of Ball's symptoms and evaluate the possibility of further surgery. The claims administrator denied the request based on a reviewing physician's opinion that the MRI was unnecessary, and the administrative tribunals affirmed that denial.

PROCEDURAL HISTORY

The claims administrator denied the request for authorization of an MRI on April 12, 2010. The Workers' Compensation Office of Judges affirmed the denial on January 19, 2011, and the Workers' Compensation Board

of Review affirmed on July 18, 2011. The Supreme Court of Appeals of West Virginia reversed the Board's decision and remanded with instructions to authorize the MRI.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Authorize an MRI of Ball's lumbar spine according to Dr. Weinsweig's March 23, 2010, request.

OPINION

Phillip R. Ball v. W. Va. Office of Insurance Commissioner/Panther Branch Coal

PER CURIAM.

STATE OF WEST VIRGINIA FILED

July 15, 2013

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

SUPREME COURT OF APPEALS OF WEST VIRGINIA

PHILLIP R. BALL,

Claimant Below, Petitioner vs.) No. 11-1126 (BOR Appeal No. 2045548) (Claim No. 2002032810)

WEST VIRGINIA OFFICE OF

INSURANCE COMMISSIONER

Commissioner Below, Respondent and

PANTHER BRANCH COAL CO.,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Phillip R. Ball, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by David L. Stuart, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated July 18, 2011, in which the Board affirmed a January 19, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 12, 2010, denial of Mr. Ball's request for authorization for an MRI of his lumbar spine. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. This Court has considered the parties' briefs and the record on appeal. 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. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. 1 Mr. Ball was injured on August 31, 2001, in the course of his employment with Panther Branch Coal Co., while lifting a rail up onto a jack. Mr. Ball was diagnosed with an acute lumbosacral strain and the claim was found compensable for displaced intervertebral disc by the claims administrator on January 25, 2002. Mr. Ball was also granted a permanent partial disability award of 8% on October 21, 2004. Over the next decade, Mr. Ball received various treatments, including lumbar spine surgery on March 2, 2009. Mr. Ball has also received several MRIs, all of which indicated degenerative changes. Following his surgery in March of 2009, Mr. Ball had nearly a year of reduced back pain. But by the end of March of 2010, Mr. Ball went to Dr. Weinsweig, complaining of increasing back pain. On March 23, 2010, Dr. Weinsweig requested authorization from the claims administrator for an MRI to diagnose the cause of Mr. Ball's symptoms in anticipation of future surgery. The claims administrator referred the case to Dr. Stemple for an evaluation of Mr. Ball's need for an MRI. Dr. Stemple recommended against authorizing an MRI of Mr. Ball's lumbar spine. Considering that Mr. Ball's prior MRIs revealed signs of degenerative disc disease, Dr. Stemple believed an MRI would be an excessively sensitive diagnostic tool. Dr. Stemple opined that unless the MRI was requested to diagnose progressive and severe neurologic deficits or to rule out serious pathologies such as a tumor, it was an unnecessary diagnostic tool in this case. Based on Dr. Stemple's recommendation, the claims administrator denied Dr. Weinsweig's request on April 12, 2010. The denial was affirmed by the Office of Judges on January 19, 2011, and by the Board of Review on July 18, 2011, leading to this appeal. The Office of Judges concluded that there was no objective basis for authorizing a lumbar MRI and affirmed the claims administrator's decision. The Office of Judges relied on the opinion of Dr. Stemple and found that although Mr. Ball was having pain, he had not submitted enough evidence to support his request for an additional MRI. The Board of Review adopted the findings of the Office of Judges and affirmed its Order on July 18, 2011. The conclusions of the Board of Review and the Office of Judges are based on a material mischaracterization of the evidence in the record. Mr. Ball has submitted enough evidence to justify his request for an additional lumbar MRI. Although the treatment notes of Dr. Weinsweig, indicating that Mr. Ball needs an additional MRI, are based primarily on Mr. Ball's subjective complaints, there is sufficient evidence, considering the record as a whole, that the request is reasonably related to Mr. Ball's compensable injury. For the foregoing reasons, we find that the decision of the Board of Review is clearly based on a material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is reversed, and the case is remanded with instructions to authorize an MRI of Mr. Ball's lumbar spine according to Dr. Weinsweig's March 23, 2010, request. 2 Reversed and Remanded. ISSUED: July 15, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3

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