

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Wanda J. Wardrep v. Adventure WV, LLC

Wardrep · No. No. 16-0578 · Decided May 5, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of a request to add a cervical spine injury and related radiculopathy as compensable components of Wanda J. Wardrep’s workers’ compensation claim. The court also upheld the denial of authorization for a cervical spine MRI and neurosurgical evaluation, concluding that the evidence did not establish a work-related cervical injury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	May 5, 2017
DOCKET	No. 16-0578
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers’ Compensation Board of Review’s final order affirming the Office of Judges’ decision, which affirmed claims-administrator decisions denying authorization for a neurosurgical evaluation and cervical spine MRI and denying addition of a cervical spine injury as a compensable component of the claim.
STANDARD OF REVIEW	The court reviewed whether the Board of Review’s decision was in clear violation of a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential value not otherwise specified in the supplied text.
PARTIES	Wanda J. Wardrep v. Adventure WV, LLC

TOPICS

workers compensation

judicial review of agency action

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether Wardrep established that a cervical spine injury arose in the course of and resulted from her employment and should be added as a compensable component of her workers' compensation claim.
2. Whether Wardrep was entitled to authorization for a neurosurgical evaluation and cervical spine MRI related to the claimed cervical injury.

HOLDINGS

1. Wardrep failed to establish that she sustained a compensable cervical spine injury in the course of and resulting from her employment; therefore, the denial of adding the cervical injury to the claim was proper.
2. Because the cervical spine was not established as a compensable body part, authorization for the requested cervical spine treatment was properly denied.
3. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"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." (4)

FACTUAL BACKGROUND

Wardrep injured herself on June 17, 2014, while lifting a bucket containing a large pump during her employment as a housekeeper, and the claim was initially held compensable for a right shoulder sprain/strain. Several examinations after the injury documented normal cervical-spine range of motion, although later testing revealed C8-T1 radiculopathy and her physician attributed it to the work injury and requested cervical treatment. Independent medical reviewers concluded that the cervical findings were incidental or degenerative and unrelated to the compensable shoulder injury.

PROCEDURAL HISTORY

The claims administrator held Wardrep's right shoulder sprain/strain compensable but denied authorization for cervical spine treatment and denied adding a cervical spine injury, including intervertebral disc weakening and cervical radiculopathy, to the claim. The Office of Judges affirmed those decisions on December 3, 2015. The

Board of Review affirmed on May 20, 2016, and the Supreme Court of Appeals of West Virginia affirmed the Board's final order.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED WANDA J. WARDREP, May 5, 2017 Claimant Below, Petitioner RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 16-0578 (BOR Appeal No. 2051002) (Claim No. 2015001102) ADVENTURE WV, LLC, Employer Below, Respondent MEMORANDUM DECISION Petitioner Wanda J. Wardrep, by John Shumate, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Adventure WV, LLC, by Timothy Huffman, its attorney, filed a timely response. The issues presented in the instant appeal are the denial of Ms. Wardrep's request for authorization of a neurosurgical evaluation and a cervical spine MRI, and the denial of her request to add a cervical spine injury as a compensable component of her claim for workers' compensation benefits.

On March 4, 2015, the claims administrator denied a request for authorization of a neurosurgical evaluation and a cervical spine MRI. Additionally, on June 17, 2015, the claims administrator denied a request to add a cervical spine injury, including weakening of an intervertebral disc and active cervical radiculopathy, as a compensable component of the claim.

The Office of Judges affirmed the March 4, 2015, and June 17, 2015, claims administrator's decisions in its Order dated December 3, 2015. This appeal arises from the Board of Review's Final Order dated May 20, 2016, in which the Board affirmed the December 3, 2015, Order of the Workers' Compensation Office of Judges.

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 and no prejudicial error.

For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. 1 Ms. Wardrep injured herself on June 17, 2014, while lifting a bucket containing a

large pump during the course of her employment as a housekeeper with Adventure WV. She initially sought medical care at Bridgeview Urgent Care on July 1, 2014, and reported experiencing right shoulder pain with reduced range of motion following the June 17, 2014, injury, and was diagnosed with a right shoulder sprain/strain.

While at Bridgeview Urgent Care, Ms. Wardrep completed a Report of Injury. The Report of Injury indicates that she sustained a right shoulder injury, and the physician's portion of the report lists her diagnosis as a right shoulder strain.

On July 9, 2014, the claim was held compensable for a right shoulder sprain/strain. Following the June 17, 2014, injury, Ms. Wardrep sought treatment with Mark White, M.D., her primary care provider. Dr. White referred her to orthopedic surgeon S. Brett Whitfield, M.D., who examined Ms. Wardrep on August 7, 2014. Dr. Whitfield noted that Ms. Wardrep complained of right shoulder pain.

During his examination, he also noted that Ms. Wardrep exhibited decreased range of motion in the right shoulder and normal range of motion in the cervical spine. Dr. Whitfield diagnosed her with a partial thickness tear of the supraspinatus tendon and arthropathy of the acromioclavicular and glenohumeral joints of the right shoulder.¹ Dr. Whitfield referred Ms. Wardrep for physical therapy, and on August 21, 2014, she began a course of physical therapy at Fayetteville Physical Therapy.

Treatment notes dated August 21, 2014, indicate that Ms. Wardrep was referred for physical therapy amid complaints of right shoulder pain. Once again, it was determined that she exhibited decreased range of motion in the right shoulder and normal range of motion in the cervical spine.

However, during an October 1, 2014, physical therapy session, it was noted that Ms. Wardrep is experiencing numbness in her left hand which she attributed to utilizing her left hand while performing light duty work. Ms. Wardrep returned for a follow-up visit with Dr. White on October 13, 2014. Dr. White also noted that she is experiencing numbness in her left hand.

However, Dr. White determined that Ms. Wardrep exhibited normal range of motion in the cervical spine with no neurological deficits in the left arm. After Ms. Wardrep's symptoms failed to resolve, Dr. White referred her for an electromyogram. An electromyogram performed on November 18, 2014, revealed C8-T1 radiculopathy.² On December 2, 2014, Dr. White opined that the C8-T1 radiculopathy revealed via an electromyogram began at the time of the June 17, 2014, injury.

Dr. White further opined that Ms. Wardrep will need to undergo a neurosurgical evaluation and cervical spine MRI. He also requested that a cervical intervertebral disc injury be added as a compensable component of Ms. Wardrep's claim for workers' compensation benefits. Dr. White later authored a letter addressed to Ms. Wardrep in which he stated that it is his belief that she

sustained a cervical intervertebral disc injury while undergoing a course of physical therapy aimed at treating the compensable right shoulder injury.

Syam Stoll, M.D., performed a records review on December 23, 2014, and recommended denying a request for authorization of a neurosurgical evaluation and cervical spine MRI. Specifically, Dr. Stoll found that multiple evaluations performed by various providers have produced normal range of motion findings in the cervical spine. Additionally, Dr. Stoll opined 1 The compensability of the right shoulder is not presently at issue.

2 The Office of Judges erroneously listed Ms. Wardrep's diagnosis as C6-T1 radiculopathy. 2 that the diagnosis of radiculopathy represents nothing more than an incidental finding. The claims administrator denied Dr. White's request for authorization of a neurosurgical evaluation and cervical spine MRI on March 4, 2015.

On April 23, 2015, Joseph Grady, M.D., performed an independent medical evaluation and authored a report memorializing his findings on the same date. Dr. Grady noted that Ms. Wardrep did not report any radicular symptoms or cervical spine discomfort during the examination. He then opined that his examination did not reveal any signs of cervical radiculopathy, and noted that Ms. Wardrep's medical record does not contain any evidence indicating that she sustained a cervical spine injury.

On June 17, 2015, the claims administrator denied Dr. White's request to add a cervical injury, including weakening of an intervertebral disc and cervical radiculopathy, as a compensable component of the claim. Finally, Prasadarao Mukkamala, M.D., performed an independent medical evaluation on August 20, 2015, and authored a report memorializing his findings on August 21, 2015.

Dr. Mukkamala opined that a cervical injury should not be added as a compensable component of the claim. He noted that Ms. Wardrep did not report an onset of cervical symptoms until three months after the June 17, 2014, injury. Dr. Mukkamala also took note of the multiple prior evaluations during which it was determined that Ms. Wardrep exhibited normal range of motion in the cervical spine.

He then opined that the June 17, 2014, injury was simply a soft tissue injury to Ms. Wardrep's right shoulder, and further opined that the diagnosis of radiculopathy represents an incidental finding of naturally occurring degenerative changes. Dr. Mukkamala also opined that authorization for the cervical spine MRI and neurosurgical evaluation was properly denied because Ms. Wardrep's cervical spine condition is not related to the compensable injury.

In its Order affirming the claims administrator's March 4, 2015, and June 17, 2015, decisions, the Office of Judges held that Ms. Wardrep failed to demonstrate that she sustained a cervical spine

injury in the course of and resulting from her employment and, therefore, is not entitled to authorization of treatment for a cervical spine injury.

The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated May 20, 2016. On appeal, Ms. Wardrep asserts that the evidence of record demonstrates that she sustained a cervical spine injury in the course of and resulting from her employment, that the cervical spine injury should be added as a compensable component of her claim, and that she is entitled to authorization of the requested treatment for the cervical spine.

Regarding the request to add a cervical spine injury as a compensable component of the claim, the Office of Judges noted that Ms. Wardrep did not began complaining of symptoms relating to cervical radiculopathy until approximately three months after the June 17, 2014, injury. Additionally, the Office of Judges found that Ms. Wardrep's medical record contains evidence of multiple pre-existing cervical spine conditions.

Specifically, the Office of Judges found that cervical spine x-rays performed on June 11, 2000, revealed spinal biomechanical alterations, intervertebral disc encroachment, arthrosis, and spondylosis. The Office of Judges further found that following the June 17, 2014, injury, Ms. Wardrep exhibited normal range of motion in the cervical spine during numerous evaluations performed by multiple treatment 3 providers.

Regarding the request for authorization of medical treatment relating to the cervical spine, the Office of Judges found that because the cervical spine is not a compensable body part, authorization for treatment of the cervical spine was properly denied.

We agree with the reasoning and conclusions of the Office of Judges, as affirmed by the Board of Review. 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: May 5, 2017
CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker 4