

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Eric Smith v. City of South Charleston

Smith · No. 14-0783 · Decided December 30, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of payment for an electromyogram and nerve conduction study requested in Eric Smith's workers' compensation claim. The court held that the study was related to lumbar radiculopathy or a degenerative back condition, rather than the compensable right ankle sprain sustained while Smith was working as a police officer.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Margaret L. Workman; Robin J. Davis; Brent D. Benjamin; Menis E. Ketchum; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	December 30, 2015
DOCKET	14-0783
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed a final order of the West Virginia Workers' Compensation Board of Review affirming the denial of authorization and payment for a nerve conduction study.
STANDARD OF REVIEW	The court reviewed whether the Board of Review's decision violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value
PARTIES	Eric Smith v. City of South Charleston

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the November 9, 2012, nerve conduction study was medically related to and reasonably required for the compensable right ankle sprain.
2. Whether the Board of Review's denial of authorization and payment was clearly erroneous under the applicable appellate standard.

HOLDINGS

1. The November 9, 2012, nerve conduction study was not medically related to or reasonably required for the compensable right ankle sprain because the evidence established that Smith's symptoms arose from lumbar radiculopathy or another back-related process.
2. The Board of Review's decision must be affirmed because it did not clearly violate a constitutional or statutory provision, rest on an erroneous conclusion of law, or rely on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"Because the ankle injury sustained on March 10, 2012, was totally unrelated to his current need for a nerve conduction study, the Office of Judges and Board of Review were not in error for denying the medical authorization for such." (at 2)

"Therefore, the decision of the Board of Review is affirmed." (at 2)

FACTUAL BACKGROUND

Eric Smith, a police officer, fell while exiting his cruiser on March 10, 2012, and his claim was held compensable for a right ankle sprain. He later experienced numbness, loss of sensation, and weakness in his right lower extremity, and nerve conduction studies showed severe right lumbosacral polyradiculopathy involving at least the L4, L5, and S1 spinal levels. An independent medical evaluator concluded that Smith's neurological symptoms arose from nerve roots in his lower back rather than from the compensable ankle injury. The workers' compensation authorities therefore denied authorization and payment for the November 9, 2012, nerve conduction study.

PROCEDURAL HISTORY

The claims administrator denied payment for an electromyogram and nerve conduction study performed on November 9, 2012. The Workers' Compensation Office of Judges affirmed the denial on February 28, 2014, and the Board of Review affirmed that decision on July 23, 2014. The Supreme Court of Appeals of West Virginia affirmed the Board's final order after finding no substantial question of law or prejudicial error.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS December 30, 2015
RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS ERIC SMITH, OF WEST
VIRGINIA Claimant Below, Petitioner vs.) No. 14-0783 (BOR Appeal No. 2049313) (Claim No.
2012029111) CITY OF SOUTH CHARLESTON, Employer Below, Respondent
MEMORANDUM DECISION Petitioner Eric Smith, by Stephen P. New, his attorney, appeals the
decision of the West Virginia Workers' Compensation Board of Review.

City of South Charleston, by Matthew L. Williams, its attorney, filed a timely response. This
appeal arises from the Board of Review's Final Order dated July 23, 2014, in which the Board
affirmed a February 28, 2014, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's April 30, 2013, decision
which denied the request for payment of an electromyogram and nerve conduction study
performed on November 9, 2012. 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. Mr. Smith, a police officer for the City of South Charleston, West Virginia, was exiting
his cruiser on March 10, 2012, when he fell and injured his right ankle.

On March 26, 2012, the claim was held compensable for a right ankle sprain. Mr. Smith
underwent a nerve conduction study on August 21, 2012, which revealed electrophysiological
evidence consistent with severe right lumbosacral polyradiculopathy affecting many levels. There
was evidence of involvement of at least the L4, L5, and S1 levels of Mr. Smith's spine.

On November 2, 2012, Mr. Smith reported to Paul Bachwitt, M.D., for an independent medical
evaluation. Dr. Bachwitt diagnosed 1 Mr. Smith with a right ankle sprain. Dr. Bachwitt noted that
any ongoing neurological problems would be unrelated to the original injury and no additional
diagnoses were appropriate in the claim. Dr. Bachwitt opined that Mr. Smith had reached his
maximum degree of medical improvement.

On November 9, 2012, Mr. Smith had another nerve conduction study and requested that it be
covered under the claim. On April 30, 2013, the claims administrator denied the request for
payment of the nerve conduction study performed on November 9, 2012. Mr. Smith protested.

On March 21, 2013, Mr. Smith reported to Constantino Y. Amores, M.D., for an independent medical evaluation. Dr. Amores diagnosed Mr. Smith with lumbar radiculopathy on the right of uncertain etiology and obesity. He found Mr. Smith had not reached his maximum degree of medical improvement.

The Office of Judges found that the nerve conduction study was not medically related and reasonably required for a compensable conditions in the claim. The Office of Judges noted that the claim has been held compensable for right ankle sprain.

The Office of Judges found that since the injury, Mr. Smith has been experiencing numbness, loss of sensation, and muscle weakness in his right lower extremity below the knee. The Office of Judges noted the record indicated that these were the symptoms for which the August 21, 2012, nerve conduction study was requested.

After the nerve conduction study, Mr. Smith was diagnosed with lumbar radiculopathy by Dr. Amores. The Office of Judges noted that the November 9, 2012, study revealed electrophysiologic evidence consistent with severe right lumbosacral polyradiculopathy affecting many levels. There was evidence of involvement of at least the L4, L5, and S1 levels.

The Office of Judges adopted the report of Dr. Bachwitt. Dr. Bachwitt opined that the ankle injury and the lumbar radiculopathy were unrelated. The Office of Judges determined that Mr. Smith's need for the nerve conduction study was related to a back injury or degenerative process as opposed to his ankle injury.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order. We agree with the decisions of the Office of Judges and Board of Review. The nerve conduction study was requested due to Mr. Smith's complaints of loss of sensation and weakness in his right lower leg. At the outset, it would seem plausible that his ankle injury was causing persistent problems in his lower leg.

However, the development of the evidence points to a source other than the March 10, 2012, leg injury. The nerve conduction study performed on August 21, 2012, revealed electrophysiological evidence consistent with severe right lumbosacral polyradiculopathy affecting many levels. There was evidence of involvement of at least the L4, L5, and S1 levels of Mr. Smith's spine.

Dr. Bachwitt opined that the source of the lower leg symptoms were the nerve roots in the lower back as opposed to the compensable ankle injury. Because the ankle injury sustained on March 10, 2012, was totally unrelated to his current need for a nerve conduction study, the Office of Judges and Board of Review were not in error for denying the medical authorization for such.

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. 2 Affirmed. ISSUED: December 30, 2015 CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin J. Davis Justice Brent D. Benjamin Justice Menis E. Ketchum Justice Allen H. Loughry II 3

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