

SUPREME COURT OF APPEALS OF WEST VIRGINIA

George Fatula III v. McElroy Coal Company

No. No. 12-1385, Supreme Court of Appeals of West Virginia (June 11, 2014)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers’ Compensation Board of Review decision denying the addition of cervical disc displacement and brachial neuritis or radiculitis as compensable diagnoses and denying authorization for cervical discectomy surgery. The court concluded that the claimant had not presented sufficient medical evidence linking the additional diagnoses and proposed surgery to the compensable mining injury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Allen H. Loughry II; Justice Margaret L. Workman; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	June 11, 2014
DOCKET	No. 12-1385
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's order affirming the Workers' Compensation Office of Judges' order, which affirmed the claims administrator's denial of additional compensable diagnoses and authorization for cervical spine surgery.
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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	George Fatula III v. McElroy Coal Company

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

employment law

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether the evidence supported adding cervical disc displacement and brachial neuritis or radiculitis as compensable components of the workers' compensation claim.
2. Whether the evidence supported authorization for anterior cervical discectomy with fusion and plating.
3. Whether the Board of Review's decision was constitutionally or statutorily erroneous, based on erroneous conclusions of law, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The claimant failed to provide sufficient medical evidence establishing that the additional diagnoses were caused by the compensable injury; therefore, the diagnoses were properly excluded from the claim.
2. Authorization for the requested cervical surgery was properly denied because the claimant did not provide sufficient medical evidence explaining how the compensable injury caused the need for surgery.
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.” (at 2)

FACTUAL BACKGROUND

On May 1, 2010, a rock fell from the ceiling of a mine and struck George Fatula III in the head while he was working as a coal miner for McElroy Coal Company. The workers' compensation claim recognized neck sprain and contusion of the face, scalp, and neck, but the claims administrator denied adding cervical disc displacement and brachial neuritis or radiculitis. An MRI showed advanced multilevel cervical disc disease and canal stenosis but no herniated discs, and the medical evidence did not adequately explain how the compensable injury caused the claimed diagnoses or the need for anterior cervical discectomy with fusion and plating.

PROCEDURAL HISTORY

The claims administrator accepted neck sprain and contusion of the face, scalp, and neck, but denied adding cervical disc displacement and brachial neuritis or radiculitis as compensable components and denied authorization for anterior cervical discectomy with fusion and plating. The Workers' Compensation Office of

Judges affirmed and modified the claims administrator's decision, finding insufficient medical evidence. The Board of Review affirmed on October 22, 2012, and the Supreme Court of Appeals affirmed the Board's order.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS June 11, 2014 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS GEORGE FATULA III, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 12-1385 (BOR Appeal No. 2047204) (Claim No. 2011006521) MCELROY COAL COMPANY, Employer Below, Respondent MEMORANDUM DECISION Petitioner George Fatula III, by Jonathan C. Bowman, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

McElroy Coal Company, by Edward M. George, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated October 22, 2012, in which the Board affirmed an April 27, 2012, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's December 5, 2011, decision which held compensable the diagnoses of neck sprain and contusion of face, scalp, and neck except eyes and denied the request to add the diagnoses cervical disc displacement, brachial neuritis or radiculitis as compensable components.

In a separate December 5, 2011, decision, the claims administrator denied the authorization for anterior cervical discectomy with fusion and plating. 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. Fatula worked as a coal miner for McElroy Coal Company. On May 1, 2010, a rock fell from the mine ceiling and struck Mr. Fatula in the head.

The claims administrator held the diagnoses of neck sprain and contusion of face, scalp, and neck except eyes compensable and denied the request to add the diagnoses cervical disc displacement and brachial neuritis or 1 radiculitis as compensable components of the claim.

The claims administrator decision also denied the authorization for anterior cervical discectomy with fusion and plating. The Office of Judges affirmed the claims administrator's decision and held that Mr. Fatula has not demonstrated that the cause of surgery was due to the compensable injury nor has he demonstrated that cervical disc displacement and brachial neuritis or radiculitis should be found compensable.

The Office of Judges also modified the claims administrator's decision and found insufficient medical evidence to authorize the surgery. On appeal, Mr. Fatula disagrees and asserts that Bruce Guberman, M.D., found he had not reached maximum medical improvement and that the surgery was directly causally related to the compensable injury. Mr. Fatula further asserts that neck sprain was merely an initial diagnosis prior to diagnostic studies and that the treating physician filed a diagnostic update for cervical disc displacement and brachial neuritis or radiculitis.

McElroy Coal Company maintains that Mr. Fatula failed to provide sufficient evidence to authorize the additional diagnoses and that Ronald Hargraves, M.D., and Dr. Guberman failed to provide any type of explanation as to how the compensable injury caused the necessity for the surgery. Dr. Hargraves and Dr. Guberman requested authorization for the anterior cervical discectomy with fusion and plating.

The Office of Judges found that Dr. Hargraves and Dr. Guberman failed to provide an explanation of how the compensable injury caused the need for the surgery. The Office of Judges held that Mr. Fatula failed to provide sufficient medical evidence to authorize the anterior cervical discectomy with fusion. An MRI revealed impressions of advanced multi-level cervical disc disease and canal stenosis but did not show any herniated discs.

Dr. Guberman requested the diagnoses of cervical disc displacement and brachial neuritis or radiculitis be added as compensable components but failed to explain how the advanced multi-level cervical disc that was seen on the initial MRI is in fact due to the compensable injury.

The Office of Judges concluded, in light of the diagnostic studies and lack of any explanation as to how the additional diagnoses are related to the compensable injury, that Mr. Fatula failed to provide sufficient medical evidence to add cervical disc displacement and brachial neuritis or radiculitis as compensable components.

The Board of Review reached the same reasoned conclusions in its decision of October 22, 2012. We agree with the reasoning and conclusions of 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: 2 CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Allen H. Loughry II

DISSENTING: Justice Margaret L. Workman Justice Menis E. Ketchum 3

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