

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Wannie R. Lusk v. Alpha Natural Resources, Inc.

Lusk · No. No. 13-0485 · Decided August 13, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review’s denial of authorization for Flexeril, Lortab, and Opana in a workers’ compensation claim. The court held that the claimant had exceeded applicable opioid-treatment guidelines and had not shown that his case warranted treatment beyond those guidelines.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Brent D. Benjamin, disqualified
JURISDICTION	West Virginia
DECIDED	August 13, 2014
DOCKET	No. 13-0485
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an Office of Judges order upholding the claims administrator’s denial of authorization for Flexeril, Lortab, and Opana.
STANDARD OF REVIEW	The court affirmed unless the Board of Review’s decision clearly violated a constitutional or statutory provision, was clearly the result of erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Wannie R. Lusk v. Alpha Natural Resources, Inc.

TOPICS

judicial review of agency action

administrative law

appellate procedure

health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming the denial of authorization for Flexeril, Lortab, and Opana under the opioid-treatment guidelines in West Virginia Code of State Rules § 85-20-53.14.
2. Whether Lusk demonstrated that his claim presented an extraordinary case warranting treatment beyond the applicable opioid-treatment guidelines.
3. Whether the Board of Review's decision violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or rested on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The denial of authorization for Flexeril, Lortab, and Opana was proper because Lusk's requested opioid therapy exceeded the treatment guidelines and the record lacked sufficient treatment documentation to support authorization.
2. Lusk failed to demonstrate that his claim was an extraordinary case warranting treatment beyond the opioid-treatment guidelines.
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

"We agree with the reasoning and conclusions of the Board of Review." (at 3)

"Therefore, the decision of the Board of Review is affirmed." (at 3)

FACTUAL BACKGROUND

Lusk sustained a compensable lumbar injury in 2008 and later received compensability determinations for lumbosacral sprain/strain, generalized anxiety disorder, recurrent major depressive disorder, and lumbar radiculitis. He had previously received opioid therapy, but the claims administrator determined in 2008 that the treatment exceeded the applicable guidelines and authorized only a short period followed by weaning and tapering. In 2012, his physicians requested authorization for Flexeril, Lortab, and Opana, but the medical documentation did not include adequate clinical notes supporting continued opioid therapy, and the grievance board found that opioid therapy had not been authorized since October 2008.

PROCEDURAL HISTORY

The claims administrator denied authorization for the requested medications on September 19, 2012, based on the opioid-treatment guidelines in West Virginia Code of State Rules § 85-20-53.14. The Workers' Compensation Office of Judges affirmed on January 30, 2013, and the Board of Review affirmed on April 24, 2013. The Supreme Court of Appeals of West Virginia affirmed the Board's decision.

DISPOSITION

affirmed

OPINION

Wannie R. Lusk v. Alpha Natural Resources

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS August 13, 2014

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

WANNIE R. LUSK, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 13-0485 (BOR Appeal No. 2048141) (Claim No. 2008047774)

ALPHA NATURAL RESOURCES, INC.,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Wannie R. Lusk, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. Alpha Natural Resources, Inc., by Robert Busse, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated April 24, 2013, in which the Board affirmed a January 30, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 19, 2012, decision denying Mr. Lusk's request for authorization of the medications Flexeril, Lortab, and Opana. 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. Lusk injured himself on June 10, 2008, when he slipped and fell while walking in mud, and the claim was initially held compensable for a lumbar sprain/strain. Following the compensable injury, Mr. Lusk was treated with opioid therapy including the medication Lortab. On October 7, 2008, the claims administrator determined that Mr. Lusk had received opioid therapy in excess of the statutory treatment guidelines contained in West Virginia Code of State Rules § 85-20-53.14 (2006), and authorized the use of Lortab for an additional three weeks with a weaning and tapering program to follow. 1 On November 20, 2009, the claim was held compensable for a lumbosacral

sprain/strain, generalized anxiety disorder, and recurrent major depressive disorder. Additionally, lumbar radiculitis was added as a compensable component of the claim on January 11, 2011. On May 23, 2012, Robert McCleary, D.O., Mr. Lusk's treating physician, prescribed Lortab and recommended that Mr. Lusk transfer his pain management care to Francis Saldanha, M.D., who was already providing Mr. Lusk with pain management injections. On July 16, 2012, Dr. Saldanha authored a letter stating that he had assumed all of Mr. Lusk's pain management care and requested authorization for the medications Flexeril, Lortab, and Opana. On July 31, 2012, Prasadarao Mukkamala, M.D., reviewed the claim and recommended denying authorization for the requested medications. He found that diagnostic imaging contained in Mr. Lusk's medical record reveals the presence of degenerative changes. He further found that in his medication request, Dr. Saldanha unacceptably failed to include any clinical notes documenting Mr. Lusk's response to ongoing treatment. On August 1, 2012, the claims administrator denied authorization for the requested medications pursuant to West Virginia Code of State Rules § 85-20-53.14. On August 28, 2012, Dr. Saldanha issued an additional report stating that Mr. Lusk had done well with pain management and had experienced an eighty percent reduction in pain, but still experienced diminished range of motion. On September 14, 2012, the StreetSelect Grievance Board determined that Mr. Lusk has not been authorized to receive opioid therapy since October of 2008. The Grievance Board then found that the record does not contain any treatment notes supporting the use of the requested medications, and concluded that it is therefore inappropriate to authorize the use of opioid therapy in a four-year-old claim. On September 19, 2012, the claims administrator denied Mr. Lusk's request for authorization of the medications Flexeril, Lortab, and Opana. In its Order affirming the September 19, 2012, claims administrator's decision, the Office of Judges held that Mr. Lusk has exceeded the treatment guidelines governing the use of narcotic pain medication contained in West Virginia Code of State Rules § 85-20-53.14, and further held that Mr. Lusk has failed to show that this is an extraordinary case warranting treatment beyond the guidelines contained in West Virginia Code of State Rules § 85-20-53.14. On appeal, Mr. Lusk asserts that the continued use of the requested medications is necessary for continuing treatment of his compensable injuries. The Office of Judges found that West Virginia Code of State Rules § 85-20-53 (2006) provides very specific requirements that must be met in cases where opioid therapy is utilized. Given that Mr. Lusk's compensable injury occurred in 2008, current treatment with opioid therapy would far exceed all of the treatment guidelines contained in West Virginia Code of State Rules § 85-20-53.14. The Office of Judges further found that the documentation received from Dr. Saldanha does not demonstrate that this is an extraordinary case warranting treatment in excess of the treatment guidelines contained in West Virginia Code of State Rules § 85-20-53.14. Further, the Office of Judges took note of the Grievance Board's determination that Mr. Lusk has not been authorized to receive opioid therapy since October of 2008. Finally, the Office of 2 Judges also noted that in 2008, the claims administrator denied the continued use of Lortab in the instant claim based on a finding that Mr. Lusk's treatment had exceeded the guidelines contained

in West Virginia Code of State Rules § 85-20-53.14, and further noted that according to the claims administrator's decision Ms. Lusk was weaned and tapered from Lortab, which is one of the medications for which he is currently requesting authorization. The Board of Review reached the same reasoned conclusions in its decision of April 24, 2013. 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: August 13, 2014 CONCURRED IN BY: Chief Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II Justice Brent D. Benjamin, disqualified 3