

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jacqueline D. Hoover v. W. Va. Office of Insurance
Commissioner/Ritchie Co. Bd. of Ed.

No. 11-0682 · No. No. 11-0682 · Decided February 7, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Workers' Compensation Board of Review's denial of authorization for a cervical MRI. The court held that the evidence did not establish that the MRI was medically related and reasonably required for the compensable injury, which included a cervical sprain/strain.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; 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	February 7, 2013
DOCKET	No. 11-0682
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's affirmance of an order denying authorization for a cervical MRI.
STANDARD OF REVIEW	The Court examined 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 upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error found.
PARTIES	Jacqueline D. Hoover v. West Virginia Office of Insurance Commissioner, Ritchie County Board of Education

TOPICS

workers compensation

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 erred in affirming the denial of authorization for a cervical MRI.
2. Whether the evidence established that the requested cervical MRI was medically related to and reasonably required treatment for the compensable neck injury.

HOLDINGS

1. The Board of Review's decision affirming denial of authorization for the cervical MRI 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.”

FACTUAL BACKGROUND

Jacqueline D. Hoover, a custodian for the Ritchie County Board of Education, suffered a work injury on May 8, 2002. Her workers' compensation claim was held compensable for lumbago, unspecified thoracic/lumbar neuritis, lumbar sprain/strain, and neck sprain/strain. In 2010, Dr. Shramowiat requested authorization for a cervical MRI, but the claims administrator denied the request because the evidence did not establish that the MRI was medically related to and reasonably required for the compensable injury; the evidence instead suggested degenerative disc disease and other non-compensable conditions.

PROCEDURAL HISTORY

The claims administrator denied petitioner's request for a cervical MRI on February 8, 2010. The Workers' Compensation Office of Judges affirmed that decision on September 3, 2010, and the Workers' Compensation Board of Review affirmed on April 4, 2011. The Supreme Court of Appeals of West Virginia reviewed the Board's final order and affirmed it.

DISPOSITION

affirmed

OPINION

Jacqueline D. Hoover v. W. Va. Office of Insurance Commissioner/Ritchie Co. Bd. of Ed.
PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS FILED

February 7, 2013

RORY L. PERRY II, CLERK

JACQUELINE D. HOOVER, SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 11-0682 (BOR Appeal No. 2045027) (Claim No. 2002058659)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER

Commissioner Below, Respondent and
RITCHIE COUNTY BOARD OF EDUCATION,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jacqueline D. Hoover, by George Zivkovich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna Faulkner, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated April 4, 2011, in which the Board affirmed a September 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 8, 2010, decision denying a request for a cervical MRI. 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. Hoover was working as a custodian for the Ritchie County Board of Education when she was injured on May 8, 2002. On June 20, 2002, the claim was held compensable for lumbago, unspecified thoracic/lumbar neuritis, sprain/strain of lumbar region, and sprain/strain of neck. On January 21, 2010, Dr. Shramowiat requested authorization for a cervical MRI. The claims administrator denied the request on February 8, 2010. The Office of Judges concluded that the preponderance of the evidence did not establish that the requested cervical MRI was medically related and reasonably required medical treatment for the compensable injury. On appeal, Ms. Hoover argues that the permanent impairment in her neck resulting from the compensable injury necessitates the MRI. The West Virginia Office of Insurance Commissioner maintains that the sprain/strain of the neck should have resolved, and that the MRI

is related to non-compensable conditions. In affirming the claims administrator's Order, the Office of Judges noted that herniated cervical disc has not been held compensable in the claim. It also noted that Dr. Shramowiat's testimony made it seem that degenerative disc disease is causing Ms. Hoover's current condition. Moreover, under West Virginia Code of State Rules § 85-20-35.5 (2006), the estimated duration for a cervical sprain/strain is one to four weeks. The Office of Judges concluded that there were no medical findings justifying an additional MRI for the cervical spine. The Board of Review reached the same reasoned conclusions in its decision of April 4, 2011. 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: February 7, 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 2