

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Elery D. Farley v. Panther Branch Coal Company

No. 13-0628 (BOR Appeal No. 2047957) (Claim No. 2011033810) · No. No. 13-0628 · Decided March 12, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s decision denying authorization for a nerve conduction study and refusing to add cubital tunnel syndrome as a compensable condition related to the claimant’s January 7, 2011 injury. The court concluded that the claimant failed to establish a causal connection between the injury and his later elbow symptoms, and that the requested study was not medically necessary. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 12, 2015
DOCKET	No. 13-0628
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s order affirming the Office of Judges’ decision that denied authorization for a nerve conduction study and denied adding cubital tunnel syndrome as a compensable condition.
STANDARD OF REVIEW	The court will affirm a Board of Review decision unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law and no prejudicial error identified
PARTIES	Elery D. Farley v. Panther Branch Coal Company

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

employment law

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming the denial of adding cubital tunnel syndrome as a compensable condition related to the January 7, 2011 injury.
2. Whether the Board of Review erred in affirming the denial of authorization for a nerve conduction study.

HOLDINGS

1. Farley failed to establish a causal connection between cubital tunnel syndrome and the January 7, 2011 compensable injury; therefore, cubital tunnel syndrome was properly excluded as a compensable condition.
2. The nerve conduction study was properly denied because it was not medically necessary or related to the compensable injury where cubital tunnel syndrome itself was not a compensable condition.
3. The Board of Review's decision must be affirmed when it is not in clear violation of a constitutional or statutory provision, does not clearly result from an erroneous conclusion of law, and is 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)

“Mr. Farley has failed to establish any causal connection between the condition of cubital tunnel syndrome and the January 7, 2011, injury.” (at 2)

FACTUAL BACKGROUND

Farley injured himself at work on January 7, 2011, when he fell while using a miner's cable, and the injury was accepted as compensable for a rotator cuff strain and an unspecified fall. Approximately one year later, he first reported elbow discomfort, and a physician requested that cubital tunnel syndrome be added as a compensable condition and that a nerve conduction study be authorized. Independent medical reviewers concluded that any cubital tunnel syndrome was not causally related to the 2011 injury, and the court relied on the absence of an explanation connecting the delayed symptoms to that injury.

PROCEDURAL HISTORY

The claims administrator held Farley's January 7, 2011 injury compensable for a rotator cuff strain and an unspecified fall, but denied his later requests concerning cubital tunnel syndrome and a nerve conduction study. The Workers' Compensation Office of Judges affirmed the claims administrator, and the Board of Review

adopted those findings and affirmed. The Supreme Court of Appeals reviewed the Board's final order and affirmed.

DISPOSITION

affirmed

OPINION

Elery D. Farley v. Panther Branch Coal

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS March 12, 2015

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

ELERY D. FARLEY, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 13-0628 (BOR Appeal No. 2047957) (Claim No. 2011033810)

PANTHER BRANCH COAL COMPANY,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Elery D. Farley, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Panther Branch Coal Company, by Robert J. Busse, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated May 21, 2013, in which the Board affirmed a December 10, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 6, 2012, decision not to authorize a nerve conduction study and not to add cubital tunnel syndrome as a compensable condition. 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. Farley, an employee for Panther Branch Coal Company, injured himself on January 7, 2011, when he fell on his side while using the miner's cable. Mr. Farley was evaluated by Jack Steel, M.D., who originally diagnosed internal derangement syndrome and a strain of the rotator cuff. Thereafter, Mr. Farley had an MRI of his shoulder. It revealed no internal derangement, just degenerative changes in the acromioclavicular joint consistent with arthritis. On April 21, 2011, the

claims administrator held the January 7, 2011, injury compensable for a strain of the rotator 1 cuff and other unspecified fall. On January 18, 2012, a full year after the compensable injury, Mr. Farley reported to Paul Bachwitt, M.D., that he had discomfort in his elbow. Dr. Bachwitt noted Mr. Farley was not at his maximum degree of medical improvement and that he would probably need left shoulder arthroscopy for glenohumeral debridement and subacromial decompression with rotator cuff repair. Dr. Bachwitt opined that this surgery should be allowed under the January 7, 2011, claim rather than a prior claim of 2003 since Mr. Farley's symptoms began after the subject injury of January 7, 2011. Mr. Farley underwent surgery on his left shoulder and on March 6, 2012, he reported to Dr. Steel for a post-operative follow-up. Dr. Steel, for the first time since the January 7, 2011, injury, noted elbow discomfort. Based upon Mr. Farley's symptoms, Dr. Steel requested that cubital tunnel syndrome be added to the list of compensable conditions related to the January 7, 2011, injury. Dr. Steel did not explain the connection between the symptoms experienced on January 18, 2012, and the January 7, 2011, injury. Mr. Farley was then referred to Dr. Bachwitt for an independent medical evaluation and Prasadarao Mukkamala, M.D., for a physician's review. Both Drs. Mukkamala and Bachwitt arrived at the conclusion that Mr. Farley's cubital tunnel syndrome, if it exists, cannot in any way be causally related to the January 7, 2011, injury. Mr. Farley requested that cubital tunnel syndrome be added as a compensable diagnosis in relation to the January 7, 2011, injury. Mr. Farley also requested a nerve conduction study. The claims administrator denied both requests. The Office of Judges found that cubital tunnel syndrome was not a compensable condition related to the January 7, 2011, injury. The Office of Judges determined that the January 7, 2011, injury and the January 18, 2012, symptoms could not be causally related to each other because of the separation in time. Furthermore, the Office of Judges noted that both Dr. Mukkamala and Dr. Bachwitt agree that the symptoms experienced by Mr. Farley could not have been the result of the January 7, 2011, injury. The Office of Judges concluded that since cubital tunnel syndrome was not a compensable condition, a nerve conduction study would neither be medically related nor reasonable. The Office of Judges noted that the nerve conduction study would not be useful as a diagnostic tool because it would not matter if Mr. Farley actually suffered from cubital tunnel syndrome since the requisite casual connection between the January 7, 2011, injury and the current symptoms does not exist. Accordingly, the Office of Judges did not authorize a nerve conduction study or add cubital tunnel syndrome as a compensable condition. The Board of Review adopted the findings of the Office of Judges and affirmed its Order. We agree with the Office of Judges and Board of Review. Mr. Farley has failed to establish any causal connection between the condition of cubital tunnel syndrome and the January 7, 2011, injury. The first complaint of elbow discomfort came a full year after the compensable injury and there is no evidence that they are in any way related. Furthermore, both Drs. Mukkamala and Bachwitt agree that there is no connection between the cubital tunnel syndrome and the compensable injury. In regard to the authorization of a nerve conduction study, we agree with the Office of Judges and Board of Review that it is not medically

necessary. 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 2 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: March 12, 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