

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CORA A. MARIANI, Petitioner

vs.) **No. 11-0335** (BOR Appeal No. 2044826)
(Claim No. 2009081506)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GREENBRIER HOTEL CORPORATION,
(Formerly CSX Hotels, Inc.), Respondent**

MEMORANDUM DECISION

Petitioner Cora A. Mariani, by Patrick Maroney, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying workers' compensation benefits. Greenbrier Hotel Corporation, by H. Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 24, 2011, in which the Board affirmed a July 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 9, 2009, decision to deny the claim for workers' compensation benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Ms. Mariani filed a Report of Occupational Injury on February 25, 2009. She claimed she injured her shoulder on November 28, 2008, when she fell on her family farm. She had previously filled out an injury investigation report, stating she injured her right shoulder on September 29, 2008, while at work. The claims administrator denied the claim for workers' compensation benefits on March 9, 2009.

The Office of Judges, in affirming the claims administrator's decision, concluded that the right shoulder condition is a result of the non-occupational injury on November 28, 2008, in which Ms. Mariani fell on her family farm. Ms. Mariani disagrees and asserts that the evidence clearly establishes that she suffered an injury on September 29, 2008, that she timely filed a workers' compensation claim when she was injured on February 25, 2009, and that it is unclear if the November 28, 2008, accident aggravated the original occupational injury. Greenbrier Hotel Corporation argues that the September 29, 2008, incident resulted in a minor injury for which Ms. Mariani sought no treatment, missed no work, and did not file a workers' compensation claim, however, it was the November 28, 2008, accident on her family farm that actually caused the injury for which she seeks workers' compensation benefits.

The Office of Judges noted several discrepancies in the record regarding the alleged injury. Ms. Mariani testified that on November 28, 2008, she fell on her tailbone, but medical records indicate she fell on her right shoulder. Additionally, there is documentation completed by Ms. Mariani that she was injured in a fall on her family property, an injury not caused by her job. Thus, the Office of Judges found the claims administrator was correct to deny the claim for workers' compensation benefits. The Board of Review reached the same reasoned conclusion in its decision of January 24, 2011.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: September 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh