

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MARLA A. HARRIS,
Claimant Below, Petitioner

vs.) No. 100831 (BOR Appeal No. 2043924)
(Claim No. 2003010236)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

HOSPICE OF SOUTHERN WEST VIRGINIA, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 3, 2010, in which the Board affirmed a December 16, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 12, 2009 Order denying authorization for a left knee arthroscopy. The appeal was timely filed by the petitioner, and a response was filed by the Insurance Commissioner. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. Having considered the parties' submissions 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.

The Board of Review affirmed the denial of authorization for a left knee arthroscopy. Ms. Harris claims that this procedure is medically related and reasonably required to treat her

FILED

June 9, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
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compensable injury. On August 20, 2002, Mr. Harris fell from her chair and injured her knees and neck. Her claim was held compensable for contusions of the knees, sprain/strain of the neck, and sprain/strain of the knee/leg. Ms. Harris underwent surgical intervention on December 30, 2003. On October 3, 2008, however, she reported back to her treatment providers. At that time a left knee arthroscopy was recommended. Ms. Harris argues that this treatment is related to her compensable knee conditions, as attested to by her treating physician, Dr. Gary G. Poehling.

The Office of Judges, however, relied upon the record review performed by Dr. Paul Bachwitt, which concluded that the requested treatment was not causally related to her compensable injury. (Dec. 16, 2009 Office of Judges Order, p. 6.) Rather, it was necessitated by well-documented and preexisting degenerative changes. *Id.* Furthermore, although Ms. Harris's treating physician referred to "complications which ensued from surgery," her records reveal that she was last treated for her compensable injury in 2004. *Id.* at 7. She did not report back with any complaints until October 3, 2008; therefore, it appeared that Ms. Harris recovered from her compensable injury and the current complaints were due to degenerative changes. *Id.* Thus, the Office of Judges affirmed the denial of authorization for a left knee arthroscopy, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 3, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the petitioner's request for a left knee arthroscopy is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum