

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DEBORAH J. TULANOWSKI, Petitioner

December 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101292 (BOR Appeal No. 2044367)
(Claim No. 2009056513)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
AEGIS COMMUNICATIONS GROUP, INC.,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 21, 2010, in which the Board affirmed an April 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's December 24, 2008, denial of a carpal tunnel syndrome claim. The appeal was timely filed by the petitioner and a response was filed by the Employer. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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.

The Board of Review affirmed the holding that Ms. Tulanowski failed to prove that her carpal tunnel syndrome was caused by her employment with Aegis Communications. Ms. Tulanowski disputes this finding and asserts that Dr. Ryu's opinion along with her own testimony clearly demonstrates the carpal tunnel was caused by her employment. Further,

she argues that in order to prove her claim compensable, she is not required to prove the exclusion of other possible causes.

In its Order affirming the Claims Administrator's denial of a claim for carpal tunnel syndrome, the Office of Judges noted the lack of certain diagnostic testing. (April 1, 2010, Office of Judges Order, p. 4). It also noted that while Ms. Tulanowski's complaints are similar to what is often seen in carpal tunnel cases, there was a lack of evidence causally connecting carpal tunnel to the employment. *Id.* Factors considered in carpal tunnel claims were also absent from the evidence. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of September 21, 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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Board of Review's September 21, 2010, Order is affirmed.

Affirmed.

ISSUED: December 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh