

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

SABRINA M. SIMMONS, Petitioner

vs.) **No. 11-0217** (BOR Appeal No. 2044515)
(Claim No. 2002050828)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
DODDRIDGE COUNTY BOARD OF
EDUCATION, Respondent**

MEMORANDUM DECISION

Petitioner Sabrina M. Simmons, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review denying physical therapy and certain medications. The West Virginia Office of the Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 6, 2011, in which the Board affirmed an April 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 13, 2009 order denying physical therapy and the medications Demerol, Darvon, and Zanaflex. 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. Simmons suffered a compensable injury to her back, hip, leg, and knee on April 11, 2002, when she caught her toe in a crack in the sidewalk and fell. Ms. Simmons's claim was held compensable for knee contusion, hip / leg abrasion, and lumbar region sprain / strain. An October 17, 2002, lumbar spine MRI revealed degenerative disc disease with central disc bulge / protrusion at L5-S1. A second lumbar spine MRI, performed on January 10, 2005, revealed a

herniated disc centrally at L5-S1 characterized as small in size without significant mass effect. Ms. Simmons underwent a third lumbar spine MRI on September 30, 2006, which revealed a probable chronic herniation of L5-S1 centrally, which did not impinge upon the exiting nerve root sleeves or thecal sac.

On October 19, 2004, Dr. Charles LeFebure performed an independent medical examination. Dr. LeFebure found Ms. Simmons to have reached maximum medical improvement, and he also opined that Ms. Simmons suffered a lumbar spine injury predating the subject injury in a 2000 automobile accident. Dr. LeFebure attributed half of Ms. Simmons's impairment to the subject injury and the remaining half to nonoccupationally related problems.

Ms. Simmons was also examined by Dr. Russell Biundo on December 29, 2008. Dr. Biundo noted that Ms. Simmons had suffered a recent exacerbation of back pain. Dr. Biundo recommended outpatient physical therapy and the medications Zanaflex, Darvon, and Demerol. The claims administrator, however, denied this request finding that the requested services were not demonstrated to be related to the compensable injury.

The Office of Judges affirmed the claims administrator's decision, as did the Board of Review. In concluding that insufficient evidence exists to link Ms. Simmons's current symptoms to her subject compensable injury, the Board of Review noted that Ms. Simmons was involved in a non-compensable automobile accident in 2000, which resulted in an injury to her lower back. Additionally, Ms. Simmons was found to have reached maximum medical improvement in 2004, and half of her impairment at that time was attributed to nonoccupational causes. In short, the Board of Review found that the record only indicated that Ms. Simmons appears to have some lower back issues, without providing evidence attributing these problems to an April 21, 2002, low back sprain / strain.

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: November 16, 2012

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum