

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 13, 2013

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

MARY LUNDY,
Claimant Below, Petitioner

vs.) **No. 12-0503** (BOR Appeal No. 2046522)
(Claim No. 2011041597)

HEARTLAND EMPLOYMENT SERVICES, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Mary Lundy, by Reginald D. Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Heartland Employment Services, LLC, by James Heslep, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 22, 2012, in which the Board affirmed an October 19, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 28, 2011, decision rejecting the claim. 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.

Ms. Lundy worked for Heartland Employment Services as a certified nurse's assistant. On June 14, 2011, while in the break room eating lunch, she turned and she felt her left knee pop, sending severe pain down her leg. Ms. Lundy was initially diagnosed with a sprain of her left knee but the initial x-rays revealed stable mild osteoarthritis. On June 28, 2011, the claims administrator rejected the claim. Following this rejection, Ms. Lundy had an MRI taken of her left knee which revealed a severely displaced bucket-handle tear of the lateral meniscus. On October 19, 2011, the Office of Judges affirmed the claims administrator's decision. The Board

of Review then affirmed the Order of the Office of Judges on March 22, 2012, leading Ms. Lundy to appeal.

The Office of Judges concluded that Ms. Lundy did not show that she sustained an injury on June 14, 2011, in the course of and resulting from her employment. The Office of Judges found that Ms. Lundy had left knee problems and that she was at work during the onset of her symptoms. But the Office of Judges found that the evidence did not show that her conditions resulted from her employment. The Office of Judges found that there was not anything specific to her employment that brought about her knee popping and the ensuing pain. The Office of Judges noted that the initial x-rays taken after her alleged injury revealed osteoarthritis. The Office of Judges also found that Ms. Lundy had received prior treatment for osteoarthritis from Dr. Yee. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Lundy has not demonstrated that she received an injury in the course of and resulting from her employment. Although she has submitted evidence that she has a knee condition and that symptoms of this condition manifested at work, Ms. Lundy has not presented sufficient evidence to show that her injury was the result of her employment.

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: December 13, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II