

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

DONNA M. MANES,
Claimant Below, Petitioner

vs.) **No. 16-0064** (BOR Appeal No. 2050633)
(Claim No. 2014033868)

MCDOWELL COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

FILED
November 29, 2016
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Donna M. Manes, by Gregory S. Prudich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. McDowell County Board of Education, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 21, 2015, in which the Board affirmed a March 17, 2015, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 5, 2014, 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. Manes, a cook, alleges that she injured her lower back on May 19, 2014, while lifting a crate of milk cartons. Treatment notes from Welch Community Hospital that same day indicate Ms. Manes reported pain in her lower back and hip and tingling and numbness in her left leg. She had a pre-existing T12 compression fracture. A lumbar x-ray showed chronic compression at T12 and osteoarthritic lumbar vertebral body lipping. X-rays of the hips showed bilateral degenerative disease. She was diagnosed with acute lumbar sprain, acute exacerbation of chronic left thigh numbness, and a history of T12 compression fracture. The employee's and physician's report of injury indicates Ms. Manes injured her lower back and hips while lifting a

milk crate full of milk. The diagnosis was listed as compression fracture. It was indicated that the injury did not aggravate a prior injury or disease. The first report of injury states Ms. Manes was filling a milk cooler when she felt pain in her back, causing her to drop the crate. It was noted that she had a prior lower back claim.

Ms. Manes sought treatment on May 27, 2014, at Princeton Community Hospital emergency room for increased pain, numbness, and tingling in her lower back and left leg since May 19, 2014. The numbness and pain were not new symptoms and had been gradually increasing; however, she stated the May 19, 2014, incident made her condition much worse. She was diagnosed with acute lumbar strain and acute exacerbation of left thigh numbness.

Ms. Manes has a history of lower back pain, leg pain, and leg numbness. Treatment notes from Tug River Health Associates indicate she was seen on July 24, 2012, for a routine check-up. It was noted that she had severe arthritis. On February 7, 2013, she reported that she was seen for a slip and fall injury. She landed on her right knee and complained of knee and lower back pain. She was diagnosed with sprain/strain of the knee and leg. On January 14, 2014, Ms. Manes reported her legs and lower back were getting worse and hurting more. She was diagnosed with lumbago, sciatica, and pain in the pelvic and thigh regions.

Ms. Manes was also treated by Robert Kropac, M.D., for her lower back and leg complaints. On March 4, 2014, she reported that her lower back was asymptomatic until February 7, 2014, when she slipped and fell on a wet floor twisting her back. She was diagnosed with lumbosacral strain superimposed on a pre-existing T12 compression fracture. On April 15, 2014, she reported that her pain was exacerbated by bending and stooping. She had pain in her lower back and legs, as well as numbness. Dr. Kropac noted that her condition had not changed. On July 28, 2014, Dr. Kropac saw Ms. Manes for a follow-up of her chronic lower back condition. She reported increased pain and numbness in her lower back and legs since she hurt her back at work. Dr. Kropac again diagnosed lumbosacral strain superimposed on a pre-existing T12 compression fracture. He recommended she have an MRI of the lumbar spine using her private insurance.

The claims administrator rejected the claim on June 5, 2014. On March 17, 2015, the Office of Judges affirmed its decision. The Office of Judges found that Ms. Manes has a history of low back problems for which she was being treated at the time of the alleged work-related injury. Treatment notes from Dr. Kropac show on March 4, 2014 that she was treated for lower extremity pain and numbness. She reported that she slipped and fell on February 5, 2013, and had an immediate onset of lower back pain. A compression fracture was noted at T12 in a January 24, 2014, MRI. Dr. Kropac diagnosed lumbosacral strain superimposed on a pre-existing T12 compression fracture prior to the May 19, 2014, incident and the diagnosis did not change after the alleged injury occurred. The Office of Judges found that Ms. Manes saw Dr. Kropac two months prior to the alleged injury for radiating pain and numbness into her left thigh and he requested a lumbar MRI. The Office of Judges also noted that Ms. Manes indicated when she presented to Princeton Community Hospital emergency room on May 27, 2014, that she had back problems and that the condition was not new, had been present since 2013, and had gradually worsened. The Office of Judges concluded that Ms. Manes did not sustain a new injury

on May 19, 2014. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on December 21, 2015.

After review, we agree with the reasoning of the Office of Judges and conclusions of the Board of Review. Ms. Manes has a history of lower back and leg pain and numbness. Her complaints and diagnosis remained the same before and after the incident occurred, as indicated by Dr. Kropac's treatment notes. A preponderance of the evidence indicates that she did not sustain a new injury on May 19, 2014.

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 29, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Allen H. Loughry II