

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BERNADETTE K. SHAW, Petitioner

February 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101370 (BOR Appeal No. 2043957)**
(Claim No. 2009057703)

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

MEMORANDUM DECISION

Petitioner, Bernadette K. Shaw, pro se, appeals the Board of Review order denying compensability and temporary total disability benefits. The Morgan County Board of Education, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 28, 2010, in which the Board affirmed a December 15, 2009, order of the Workers' Compensation Office of Judges. In its order, the Office of Judges affirmed the claims administrator's denial of compensability and temporary total benefits. 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, response, 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 determined Ms. Shaw did not suffer from a work-related injury on March 10, 2008, and denied Ms. Shaw's request for compensability and temporary total

benefits. Ms. Shaw asserts her request for compensability and temporary total benefits were incorrectly denied by the Board of Review regardless of whether she suffers from a work-related hernia (or some other work-related injury) or not. Further, Ms. Shaw asserts she completed and submitted an Accident Report to her immediate supervisor who failed to submit the form to the Morgan County Board of Education. The Morgan County Board of Education asserts Ms. Shaw failed to timely complete an Accident Report, failed to prove she suffers from a work-related injury, and no physician has been able to determine the etiology of Ms. Shaw's groin/abdominal pain.

In its Order denying Ms. Shaw's request for compensability and temporary total disability benefits the Office of Judges found several problems with Ms. Shaw's claim including: the absence of a completed application for benefits; the alleged injury occurred on March 10, 2008, but treatment was not sought until June 25, 2008; no physician or diagnostic procedure found a hernia or lump; and Ms. Shaw failed to report the injury until August 18, 2008. (December 15, 2009, Office of Judges Order, p. 7). "Despite the introduction into evidence of every treatment and progress notes of each examining physician, [Ms. Shaw's] complaint of abdominal and groin pain have no clear etiology and no causal connection to [Ms. Shaw's] employment has been established." *Id.* It further held that Dr. Marsha Bailey was the only physician to perform a complete review of the medical records and opined Ms. Shaw does not suffer from a work-related injury. *Id.*, p. 8. The Office of Judges, too, found no basis for granting Ms. Shaw's request for compensability and temporary total disability benefits or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of June 28, 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 denial of Ms. Shaw's request for compensability and temporary total disability benefits is affirmed.

Affirmed.

ISSUED: February 24, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh